

Comments by DCASA on the Draft National Credit Amended Bill

General Comments by DCASA

DCASA and its members have been deeply involved since 2007 to improve the Debt Review Process embedded in the NCA to its current level. The problem in 2007 was that the Debt Review process in the NCA was well intended but the lack of practical process guidelines made Debt Review an ineffective tool. It was only after the implementation of the practical NCR Debt Review Guidelines that Debt Review became effective. Based on international feedback the Debt Review practice and process implemented are the best in the world. This sentiment is echoed by the majority of Credit Providers in South Africa.

DCASA supports the proposed Debt Intervention initiative for low income earners but, like in 2007, we are of the view that the Debt Intervention Bill is unlikely to provide the intended relief.

DCASA has provided detailed comments on the Bill below but our general comments are as follows:

- a. In terms of the Bill the NCR is required to receive and process applications. This means that the NCR, as Regulator, is required to step outside its role as defined in Section 12 – 25. The proposed role of the NCR will be in direct conflict with its current role and obligations. In addition, the skills required by NCR staff to fulfil the proposed role may well require them to be registered as Debt Counsellors in order to obtain the required skills and registration

credentials to conduct the application assessment and prepare meaningful recommendations. In addition the NCR will require technology/software, similar to the software used in the Debt Review process.

- b. The lack of a defined process with timelines and forms will render the proposed process un-implementable. In order to be effective the process, timelines and forms need to be included in the Bill and not in any proposed subsequent Regulations. If not included in the Bill a similar situation as in 2007 could well emerge where the lack of a defined process (any legal certainty) is used as reason for active non-cooperation in the Credit Industry.
- c. The application process, assessment process, timelines protection of the Consumer should be well defined and embedded in systems to ensure Consumer access (applications), Credit Provider information provision, Credit Bureau reporting, repayment proposal calculation and validation, referral to NCT, defined payment process (via existing PDA's) and annual review.
- d. Apart from possible conflicting functions the NCR is not well positioned to provide the service. Qualifying Consumers reside in the entire South Africa and very often do not have access to the required technology or airtime to apply electronically or by phone. The NCR is currently represented in one central place and lack of representation will render the application process ineffective.
- e. The current application requirements are unrealistic. Based on our experience the targeted Consumers are not in a position to provide proof of income for 6 months, list of assets or professional tools, furniture, etc. The application process needs to be substantially simplified.
- f. The proposed evaluation process is over ambitious and unworkable. A simplified well defined evaluation process which does not lead to legal uncertainties should replace the proposed process as follows:

- i. Qualifying Consumers should complete a defined application form with a registered Debt Counsellor. This should include Consumer details, current income, debt and details.
- ii. On receipt of assessment an affordability assessment by a registered Debt Counsellor should be completed to validate income and expenses and to determine if the Consumer qualifies and if yes the amount of money available to repay debt.
- iii. Existing debt should be verified with current Credit Bureau information.
- iv. Checks for Reckless Credit and prescribed debt should be conducted.
- v. Defined process with Credit Providers to verify balances and obtaining of required information for reckless assessment and prescribed debt to be included.
- vi. If the consumer qualifies, the completed application together with recommendations should be submitted to the NCR by a registered Debt Counsellor.
- vii. The recommendation should include:
 - Proposed repayment plan (or not) based on already agreed industry concessions (DCRS or a new DCRS aimed at Debt Intervention).
 - Recommendations on reckless credit, debt prescription and Section 101 and Section 103(5).
- g. The proposed Debt Intervention should be simplified.
 - i. If affordability is zero then no payments for 12 months
 - ii. If affordability is above zero payment in line with affordability.

- h. The proposed exclusion of Debt where Credit Insurance is present is unrealistic for the following reasons:
- i. The Consumer very often does not know if Credit Insurance is included or not.
 - ii. No process is included to obtain this information from the Credit Provider.
 - iii. Qualifying Consumers are normally in arrears with payments when they apply and this means the Credit Insurance cover has been cancelled.
 - iv. If excluded this means that Consumer is obligated to continue with contractual payment (including Credit Insurance) which they don't have.
- i. On completion of the evaluation the NCR is required to make a recommendation to the NCT. This will require an affordability assessment, validation of information with Credit Providers and constructing of recommendations which might include a repayment plan (or zero repayments), maximum interest, fees and other charges for defined period and possible Reckless Credit recommendations and a proposed repayment plan (or zero repayments), maximum interest, fees and other charges for defined period (in line with the NCT powers). As stated above the NCR will be placed in a conflicting and compromised position to perform functions normally done by a NCR Registrant. Credit Providers will be required to implement processes in parallel with the Debt Review Process and the NCR will de facto become a processing centre within an industry for which they are the Regulator. This will place Credit Providers with no recourse on process disputes with regard to the Debt Intervention process.
- j. In terms of the Bill, the NCT has been provided with powers to amend contractual terms. This will in all probability lead to a Constitutional Challenge which must be avoided to ensure implementation.

- k. In terms of the Bill an annual review over a three year period is proposed. Based on our experience this proposal is unpractical and may well lead to no Debt Intervention assistance received by the qualifying Consumer. As motivation the following:
- i. Debt is limited to R50 000 based on income of R7500. Based on 36 month repayment agreement the Consumers will be required to repay approximately R2000 per month. If the Consumer applies in month one and makes no payment for 12 months the outstanding debt increases to R65 000 after 12 months, and R111 000 after 36 months if interest, fees and other charges have not been reduced.
 - ii. Based on our experience annual assessments of Consumers with an income less than R7500 per month is near impossible. They change jobs, telephone numbers and address very often and this alone will make it impossible to conduct annual reviews.
 - iii. The cost of conducting annual reviews by the NCR and NCT may well exceed the Debt amount.
 - iv. If an annual review is not possible, the lack of an annual review places the Consumer in a worse situation compared to the date of application. The debt has increased and the lack of payment will enable Credit Provider to commence legal enforcement proceedings.
- l. Our recommendation is to simplify the process to a once off application with defined results and period instead of an annual review process. This will place Consumers in a better position to receive the assistance when required.
- m. The criminalisation of lack of Reckless Credit reporting is not supported for the following reasons:

- i. Reckless Credit is well defined in the NCA. What is required is a defined process to conduct Reckless Credit assessments within defined timeframes. The lack of a defined process and timeframes leads to process delays created by Credit Providers.
 - ii. The proposed criminalisation process will have a defined consequence of driving more Debt Counsellors out of the industry.
 - iii. A main reason for the lack of Reckless Credit applications by Debt Counsellors is directly related to the cost of providing the service without the prospect of compensation and the reality of a Cost Order against Debt Counsellors as applied for by Credit Providers.
 - iv. One of the proposals contemplated in 2007 was to introduce a fee payable by Credit Providers if a matter is found to be reckless. A review of this proposal may well be a solution and should follow any Reckless Credit Judgement by a Court or Tribunal.
- n. What is required to make Reckless Credit identification effective is a defined process, amendment of Debt Counsellor Fee structure and protection against regular cost orders.
 - o. We support increased powers of the NCR and NCT to declare an agreement reckless. Legal clarity should be ensured in the Bill in defining the powers of the NCR and NCT.
 - p. One matter that needs attention is where an application is received in terms of Section 86(6) and possible reckless credit is identified and referred to the NCR. The Consumer will lose protection on the expiry of 60 business days unless the reckless matter has been referred to a Magistrate Court. Where a possible Reckless Credit matter has been referred to the NCR, the Consumer should receive protection similar to the process where a Reckless Credit matter has been referred to a Magistrate Court.

- q. The proposed Debt Intervention powers by the Minister in Section 88F may result in debt starvation to Consumers in possible vulnerable industries, income groups and economic conditions. The wide powers bestowed to the Minister will create legal and risk uncertainties that will affect the constitutional right of Consumers to apply for Credit. In addition these Consumers may well be forced to apply for Debt with unregistered Credit Providers and may leave Consumers unprotected.
- r. DCASA recommends a simplified once off Debt Intervention process with defined interventions based on the affordability of the Consumer. In cases where the Consumer has defined affordability, repayments for a defined period should be made and if payments are met during the defined period, the NCT order should order the balance at that point in time as extinguished. If Consumers have no affordability at point of application the consumer should be required to submit proof of remuneration/income on a monthly basis. If income has increased the Consumer should pay x percentage of the affordability to the Credit Provider. If after 36 months no change in affordability is evident the debt should be declared extinguished.
- s. This simplified process can be performed by Debt Counsellors represented country wide using existing Debt Counselling systems. Debt Counsellors have skills, processes and systems in place to conduct affordability assessments, interface with Credit Providers, report to Credit Bureaus and to formulate recommendations. If a simplified process is followed cost can be contained.
- t. Completed applications could be referred to the NCR.
- u. DCASA is fully aware that Consumers are not in a position to pay for this service and for that reason it is proposed that Debt Counsellors should receive a defined percentage of the debt repayments where payments are possible. In order to manage payments, DCASA recommends that payment by PDA be made compulsory (in order to reduce

the payment control cost) and that PDA should receive a defined fee which is subtracted from the payment made by the Consumer.

- v. Lastly the lack of legal certainty on Section 103(5) needs to be included in the Bill.

Deletion

Insertion

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BILL

To amend the National Credit Act, 2005, so as to provide for debt intervention; to include the evaluation and referral of debt intervention applications and the suspension of agreements considered to be reckless as part of the enforcement functions of the National Credit Regulator; to include the consideration of a referral as a function of the Tribunal; to require a credit provider and debt counsellor to determine whether an agreement is reckless; to provide for a court to refer a matter for debt intervention; to provide for an application for debt intervention and evaluation thereof; to provide for orders related to debt intervention and rehabilitation in respect of such an order; to enable the Minister to prescribe a debt intervention; to provide for mandatory credit life insurance; to provide for offences related to debt intervention, prohibited credit practices, reckless lending, selling or collecting prescribed debt and related to failure to register; to provide for measures when an offence is committed by a company; to provide for penalties in relation to the created offences; to provide for the Tribunal to change or

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rescind an order under certain circumstances; to require the Minister to prescribe a financial literacy and budgeting skills programme; and to provide for matters connected therewith.

NATIONAL CREDIT ACT 34 OF 2005

ACT

To promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information; to promote black economic empowerment and ownership within the consumer credit industry; to prohibit certain unfair credit and credit-marketing practices; to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting; to provide for debt re-organisation or debt intervention in cases of over-indebtedness; to regulate credit information; to provide for registration of credit bureaux, credit providers and debt counselling services; to establish national norms and standards relating to consumer credit; to promote a consistent enforcement framework relating to consumer credit; to establish the National Credit Regulator and the National Consumer Tribunal; to repeal the Usury Act, 1968, and the Credit Agreements Act, 1980; and to provide for related incidental matters.

Part B
Purpose and application (ss 3-7)

3 Purpose of Act

The purposes of this Act are to promote and advance the social and economic welfare of South Africans, promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry, and to protect consumers, by-

- (a) promoting the development of a credit market that is accessible to all South Africans, and in particular to those who have historically been unable to access credit under sustainable market conditions;
- (b) ensuring consistent treatment of different credit products and different credit providers;
- (c) promoting responsibility in the credit market by-
 - (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and
 - (ii) discouraging reckless credit granting by credit providers and contractual default by consumers;
- (d) promoting equity in the credit market by balancing the respective rights and responsibilities of credit providers and consumers;
- (e) addressing and correcting imbalances in negotiating power between consumers and credit providers by-
 - (i) providing consumers with education about credit and consumer rights;
 - (ii) providing consumers with adequate disclosure of standardised information in order to make informed choices; and
 - (iii) providing consumers with protection from deception, and from unfair or fraudulent conduct by credit providers and credit bureaux;

- (f) improving consumer credit information and reporting and regulation of credit bureaux;
- (g) addressing and preventing over-indebtedness of consumers, and providing mechanisms for resolving over-indebtedness based on the principle of satisfaction by the consumer of all responsible financial obligations where the consumer's financial situation so allows, or may so allow in the foreseeable future;
- (h) providing for a consistent and accessible system of [consensual] resolution of disputes arising from credit agreements; and

(g) The proposed amendment of (g) will fundamentally change the current implementation of Section 86. The current interpretation of Courts require a Consumer repayment plan that will repay the debt in full. The proposed amendment will change this interpretation to allow for payments in line with what the Consumer's financial situation which might mean full repayment is not required. The unintended consequence may create legal uncertainty and an inability to finalise Debt Review applications in the Magistrate Courts and Tribunal.

It is proposed that the a new section be created to cater for Debt intervention along the following lines:

(gA) Providing for debt intervention for qualifying Consumers where the Consumer's financial situation so allows, or may so allow in the foreseeable future;

(h) Removal of consensual resolution simply means forced compliance which, if implemented, will destroy the industry consensus process established by the Credit Industry Forum (CIF).

The proposed removal of consensual may have a profound effect of the current consensual processes and concessions as embedded in the NCR Task Team Agreement.

This may affect the process rules agreed in the Task Team Agreement which was implemented and agreed to overcome the drafting shortcomings in the National Credit Act.

This may also affect the consensual interest and fee reductions agreed and embedded in the DCRS rules.

- (i) providing for a consistent and harmonised system of debt restructuring, debt intervention, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements where the consumer's financial situation so allows, or may so allow in the foreseeable future.

This may also affect the NCR Guidelines which was issued after the Credit Industry Forum reached consensus on practical process issues aimed at improving the Debt Review process.

If the Consensual CIF process is removed Debt Review may be forced to return to the lack of industry process rules that existed prior to the Task Team Agreement.

It is proposed that the aim of providing for a consistent and accessible system of resolution of disputes arising from credit agreements be included in the new (gA) proposed in (g) above.

The proposed amendment of (i) will have a profound effect on the current implementation of Debt Review. The addition of the proposed wording "where the Consumer's financial situation so allows, or may so allow in the foreseeable future" may lead to legal disputes on debt review repayment plans submitted to Court and Tribunal. This legal uncertainty will undo the harmonised and defined Debt Review process set out in the NCA and several judgments that provided legal clarity on the Debt Review process. In its current proposed format legal disputes by the parties involved in the Debt Review process could well undo a decade of Judgements which provided legal clarity on several aspect on the Debt Review process.

It is proposed that the proposed additions be added to the new clause proposed in (g) above.

<p>5 Limited application of Act to incidental credit agreements</p> <p>(1) Only the following provisions of this Act apply with respect to an incidental credit agreement:</p> <ul style="list-style-type: none"> (a) Chapters 1, 2, 7, 8 and 9; (b) Chapter 3, sections 54 and 59; (c) Chapter 4, Parts A and B; (d) Chapter 4, Part D, except to the extent that it deals with reckless credit; (dA) Chapter 4, Part E; (e) Chapter 5, Part C, subject to subsection (3) (a); (f) Chapter 5, Parts D and E, once the incidental credit agreement is deemed to have been made in terms of subsection (2); and (g) Chapter 6, Parts A and C. 	
<p>6 Limited application of Act when consumer is juristic person</p> <p>The following provisions of this Act do not apply to a credit agreement or proposed credit agreement in terms of which the consumer is a juristic person:</p> <ul style="list-style-type: none"> (a) Chapter 4 - Parts C, D and E; (b) Chapter 5 - Part A - section 89 (2) (b); (c) Chapter 5 - Part A - section 90 (2) (o); and (d) Chapter 5 - Part C. 	
<p>15 Enforcement functions of National Credit Regulator</p> <p>The National Credit Regulator must enforce this Act by-</p> <ul style="list-style-type: none"> (a) promoting informal resolution of disputes arising in terms of this Act between consumers on the one hand and a credit 	

<p>provider or credit bureau on the other, without intervening in or adjudicating any such dispute;</p> <p>(b) receiving complaints concerning alleged contraventions of this Act;</p> <p>(c) monitoring the consumer credit market and industry to ensure that prohibited conduct is prevented or detected and prosecuted;</p> <p>(d) investigating and ensuring that national and provincial registrants comply with this Act and their respective registrations;</p> <p>(e) issuing and enforcing compliance notices;</p> <p>(f) investigating and evaluating alleged contraventions of this Act;</p> <p>(g) negotiating and concluding undertakings and consent orders contemplated in section 138 (1) (b);</p> <p>(h) referring to the Competition Commission any concerns regarding market share, anti-competitive behaviour or conduct that may be prohibited in terms of the Competition Act, 1998 (Act 89 of 1998);</p> <p>(hA) evaluating and referring applications for debt intervention contemplated in sections 88A and 88F;</p>	<p>(hA) The proposed addition of enforcement powers of the NCR will have the unintended consequences in that the NCR will fulfil opposing roles of Regulation and Debt Intervention.</p> <p>Section 15 deals with the enforcement functions of the NCR. The proposed amendment has the effect of adding new dimension to its functions.</p> <p>By adding debt intervention to the role of the NCR the NCR is required to evaluate applications for referral to the tribunal.</p> <p>The proposed evaluation process will require the receipt of Bureaus with the aim of formulating a referral to the NCT.</p> <p>Unless such a referral include a detail affordability assessment and proposed repayment proposal the submission of the</p>
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<p>(i) referring matters to the Tribunal and appearing before the Tribunal, as permitted or required by this Act; and</p> <p>(hB) assessing and suspending credit agreements considered to be reckless as contemplated in section 82A.</p>	<p>documents required in the proposed Section 88A and 88F will be of no value.</p> <p>By adding the duties as proposed in (hA) the NCR is required to fulfil an administration function which normally the NCR will monitor and oversee.</p> <p>We will comment more on the proposed process in our comments on the proposed section 88A and 88F, but adding an additional function to the NCR which require receiving and assessment of Debt intervention applications will add a statutory function to the NCR which does not align with the rest of the functions set out in Section 15 and will be in conflict with the current role of the NCR.</p> <p>Based on the proposed process the Consumer has to apply with the NCR who can decline the application. When an application has been declined the Consumer does not have the right to approach anybody. Currently in Section 86(9) a Consumer whose debt review application has been declined has the right to approach a Court.</p> <p>The introduction of the new statutory role for the NCR may place the NCR in a difficult position where the assessing and referring debt intervention statutory obligations may be in conflict with existing duties which may lead to legal challenges.</p> <p>(hB) Reckless Credit remains problematic and a better solution is required. We support the (hB) but the lack of reckless referral process and lack of compensation to conduct reckless credit assessment will render this process useless. We will comment in detail under section 82A.</p>
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<p>(j) dealing with any other matter referred to it by the Tribunal.</p>	
<p>27 Functions of Tribunal</p> <p>The Tribunal or a member of the Tribunal acting alone in accordance with this Act or the Consumer Protection Act, 2008 may-</p> <p>(a) adjudicate in relation to any-</p> <ul style="list-style-type: none"> (i) application that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application; or (iA) referral that may be made to it in terms of the Act, and make any order provided for in this Act in respect of such referral; or (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in this Act; <p>(b) grant an order for costs in terms of section 147; and</p> <p>(c) exercise any other power conferred on it by law.</p> <p>[S. 27 amended by s. 121 (1) of Act 68 of 2008.] [Date of commencement of s. 27: 1 September 2006.]</p>	<p>(iA) The replacement of <i>application</i> with <i>referral</i> will have an effect on the interpretation of different sections of the NCA which currently refers to application. For instance Section 110, 113, 114, 115 to name but a few.</p>
<p>43 Registration of credit bureaux</p> <p>(1) A person must apply to be registered as a credit bureau if that person engages for payment, other than as a credit provider or an employee of a credit provider, in the business of-</p> <p>(a) receiving reports of, or investigating-</p> <ul style="list-style-type: none"> (i) credit applications; (ii) credit agreements; (iii) payment history or patterns; or 	

<p>(iv) consumer credit information as defined in section 70 (1); or (v) successful debt intervention applications; relating to consumers or prospective consumers, other than reports of court orders or reasons for judgment or similar information that is in the public domain;</p> <p>(b) compiling and maintaining data from reports contemplated in subparagraph (i); and</p> <p>(c) issuing reports concerning consumers or other natural persons based on information or data referred to in this paragraph.</p>	<p>(v) Successful debt intervention applications has not been defined. Section 43(V) may also be in conflict with Section 70(1)(a) where the following addition is proposed: "a debt intervention granted"</p> <p>(V) Successful debt intervention needs to be defined.</p>
<p>60 Right to apply for credit</p> <p>(1) Subject to this Act [Every] every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.</p> <p>(2) Subject to sections 61 and 66, a credit provider has a right to refuse to enter into a credit agreement with any prospective consumer on reasonable commercial grounds that are consistent with its customary risk management and underwriting practices.</p> <p>(3) Subject to sections 61 and 92 (3), nothing in this Act establishes a right of any person to require a credit provider to enter into a credit agreement with that person. [Date of commencement of s. 60: 1 June 2007.]</p>	
<p>69 National register of credit agreements</p> <p>(1) The Minister may require the National Credit Regulator to establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the information provided to it in terms of this section.</p> <p>(1A)The National Credit Regulator must keep a register of applications for debt intervention contemplated in section 88A or as may be</p>	<p>(1A) Suggest implementation date to be added. A requirement for National Loans Register in the NCA is not implemented yet despite being a requirement in the 2007</p>

prescribed in terms of section 88F, received by the National Credit Regulator

and any order made in respect of such applications.”;

(2) Upon entering into or amending a credit agreement, other than a pawn transaction or an incidental credit agreement, the credit provider must report either directly to the national register established in terms of [this section] subsection (1) or to a credit bureau, in the prescribed manner and form, and within the prescribed time the following information, subject to subsection (6) []

- (a) The credit provider's name, principal business address, and registration number, if any;
- (b) the name and address of the consumer;
- (c) if the consumer is-
 - (i) a natural person, their identity number, or in the case of a person who is not a South African citizen and who does not have an identity number, their passport number; or
 - (ii) a juristic person, its registration number;
- (d) if the agreement is a credit facility, the credit limit under that facility, and the expiry date of the agreement, if any; and
- (e) if the agreement is a credit transaction or credit guarantee-
 - (i) the principal debt under the agreement;
 - (ii) the particulars of any previously existing credit agreement that was terminated or satisfied in connection with the making of the new agreement;
 - (iii) the amount and schedule of each payment due under the agreement; and
 - (iv) the date on which the consumer's obligations will be fully satisfied if the agreement is fully complied with.

(3) A credit provider must report the particulars of the termination or satisfaction of any credit agreement reported in terms of subsection (2), in the prescribed manner and form, either directly to the national register established in terms of [this section] subsection (1) or to a credit bureau.

NCA. In addition the information in the proposed register to be defined. This process must be electronically processed with interfaces between the various parties.

<p>(4) If a person transfers to another person the rights of a credit provider under a credit agreement referred to in subsection (2)-</p> <ul style="list-style-type: none"> (a) the person who transfers those rights must report the particulars of that transfer, in the prescribed manner and form, to the national register established in terms of [this section] subsection (1); and (b) the person to whom those rights are transferred must satisfy any subsequent obligations of the credit provider under this section. <p>(5) A credit bureau must transmit to the national register established in terms of [this section] subsection (1), in the prescribed manner and form, any information reported to it by a credit provider in terms of this section.</p> <p>(6) The Minister may prescribe alternative requirements, in place of any of those set out in subsection (2), with respect to developmental credit agreements.</p> <p>(7) The Minister, by regulation in accordance with section 171, may prescribe the information to be recorded in the register contemplated in subsection (1A).</p>	
<p>70 Credit bureau information</p> <p>(1) In this section, 'consumer credit information' means information concerning-</p> <ul style="list-style-type: none"> (a) a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement a debt intervention granted, and related matters; (b) a person's financial history, including the person's past and current income, assets and debts, and other matters within the 	<p>(a) In other sections the term successful debt intervention is used. In this section the term debt intervention granted is used. Suggest consistent use in the bill of debt intervention which is defined is recommended.</p>

scope of that person's financial means, prospects and obligations, as defined in section 78 (3), and related matters;

- (c) a person's education, employment, career, professional or business history, including the circumstances of termination of any employment, career, professional or business relationship, and related matters; or
- (d) a person's identity, including the person's name, date of birth, identity number, marital status and family relationships, past and current addresses and other contact details, and related matters.

(2) A registered credit bureau must-

(a) accept the filing of consumer credit information from any credit provider on payment of the credit bureau's filing fee, if any;

(aA) accept without charge the filing of consumer credit information from the National Credit Regulator related to a successful debt intervention application;

(b) accept without charge the filing of consumer credit information from the consumer concerned for the purpose of correcting or challenging information otherwise held by that credit bureau concerning that consumer;

(c) take reasonable steps to verify the accuracy of any consumer credit information reported to it;

(aA) Proposed amendment it refers in Section 43(v) to "successful debt intervention applications", Section 70(1)(a) refers to "a debt intervention granted", and (aA) refers to "a successful debt intervention application";

The lack of consistent reference to a "successful" debt intervention will render reporting problematic.

Suggest use of debt intervention granted instead of successful debt intervention.

- (d) retain any consumer credit information reported to it for the prescribed period, irrespective of whether that information reflects positively or negatively on the consumer;
 - (e) maintain its records of consumer credit information in a manner that satisfies the prescribed standards;
 - (f) promptly expunge from its records any prescribed consumer credit information that, in terms of the regulations, is not permitted to be entered in its records or is required to be removed from its records;
 - (g) issue a report to any person who requires it for a prescribed purpose or a purpose contemplated in this Act, upon payment of the credit bureau's fee except where the Act explicitly provides that no fee be charged;
 - (h) not draw a negative inference about, or issue a negative assessment of, a person's creditworthiness merely on the basis that the credit bureau has no consumer credit information concerning that person; and
 - (i) not knowingly or negligently provide a report to any person containing inaccurate information.
- (3) In addition to-
- (a) the consumer credit information contemplated in subsection (2), a credit bureau may receive, compile and report only other prescribed information in respect of a consumer; and
 - (b) the sources of consumer credit information contemplated in subsection (2), a credit bureau may receive consumer credit information in respect of a consumer only from other prescribed persons.
- (4) The Minister may prescribe-
- (a) standards for the filing, retention and reporting of consumer credit information by credit bureaux, in addition to, or in furtherance of the requirements set out in this section; and
 - (b) maximum fees that may be charged to a consumer for accessing consumer credit information concerning that person.

<p>(5) For the purpose of monitoring the consumer credit market to detect apparent patterns of reckless credit granting and over-indebtedness, researching the accessibility and use of credit by persons contemplated in section 13 (a), and otherwise exercising its mandate to research consumer credit issues and to investigate and enforce compliance with this Act, the National Credit Regulator may-</p> <ul style="list-style-type: none"> (a) require any credit bureau to provide periodic synoptic reports of aggregate consumer credit information in the prescribed manner and form to the National Credit Regulator, but any such report must not identify any particular consumer or relate a particular consumer to any information so reported; and (b) make further reasonable requests for information from a credit bureau related to the information contemplated in paragraph (a); and (c) analyse information provided to it under this section or section 69. <p>(6) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence. [Date of commencement of s. 70: 1 September 2006.]</p>	
<p>71 Removal of record of debt adjustment or judgment</p> <p>(1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter, must be issued with a clearance certificate by a debt counsellor within seven days after the consumer has-</p> <ul style="list-style-type: none"> (a) satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or (b) demonstrated- <ul style="list-style-type: none"> (i) financial ability to satisfy the future obligations in terms of the re-arrangement order or agreement under- <ul style="list-style-type: none"> (aa) a mortgage agreement which secures a credit agreement for the purchase or improvement of immovable property; or 	

- (bb) any other long term agreement as may be prescribed;
- (ii) that there are no arrears on the re-arranged agreements contemplated in subparagraph (i); and
- (iii) that all obligations under every credit agreement included in the re-arrangement order or agreement, other than those contemplated in subparagraph (i), have been settled in full.

[Sub-s. (1) substituted by s. 21 of Act 19 of 2014.]

(2) A debt counsellor must for the purposes of the demonstration envisaged in subsection (1) (b), apply such measures as may be prescribed.

[Sub-s. (2) substituted by s. 21 of Act 19 of 2014.]

(3) If a debt counsellor decides not to issue or fails to issue a clearance certificate as contemplated in subsection (1), the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection (1), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer.

[Sub-s. (3) substituted by s. 21 of Act 19 of 2014.]

“(3A) Credit bureaux must remove a listing related to a successful debt intervention application—

- (a) seven days after the period contemplated in section 88C(2)(c) expires;
- (b) seven days after a period contemplated in section 88C(3)(a) or (b) expires, where the debt intervention applicant did not present his or her financial circumstances to the Tribunal for a further decision;
- (c) 12 months after the date on which the order contemplated in section 88C(4) was handed down; or
- (d) seven days after the period contemplated in section 88C(5)(b) expires, whichever is the later date.

(3A) successful debt intervention application needs to be defined as stated above.

(3A)(a) Suggest granted debt intervention instead of successful debt intervention.

The unintended consequence of (a) is that Consumer may again apply for debt but what happens if the Consumer has submitted the required information for the second 12 months of debt intervention but this process has not been finalized prior to the expiry of the 12 months which forces removal of the information from the credit bureau.

(4) (a) A debt counsellor must within seven days after the issuance of the clearance certificate, file a certified copy of that certificate, with the national register established in terms of section 69 of this Act and all registered credit bureaux.

(b) If the debt counsellor fails to file a certified copy of a clearance certificate as contemplated in subsection (1), a consumer may file a certified copy of such certificate with the National Credit Regulator and lodge a complaint against such debt counsellor with the National Credit Regulator.

[Sub-s. (4) substituted by s. 21 of Act 19 of 2014.]

(5) Upon receiving a copy of a clearance certificate, a credit bureau, or the national credit register, must expunge from its records-

(a) the fact that the consumer was subject to the relevant debt re-arrangement order or agreement;

(b) any information relating to any default by the consumer that may have-

(i) precipitated the debt re-arrangement; or

(ii) been considered in making the debt re-arrangement order or agreement; and

(c) any record that a particular credit agreement was subject to the relevant debt re-arrangement order or agreement.

(6) Upon receiving a copy of a court order rescinding any judgment, a credit bureau must expunge from its records all information relating to that judgment.

(7) Failure by a credit bureau to comply with a notice issued in terms of section 55, in relation to this section, is an offence.

[Date of commencement of s. 71: 1 June 2007.]

71A Automatic removal of adverse consumer credit information

(1) The credit provider must submit to all registered credit bureaux within seven days after settlement by a consumer of any obligation under any credit agreement, information regarding such settlement where an obligation under such credit agreement was the subject of-

- (a) an adverse classification of consumer behaviour;
- (b) an adverse classification enforcement action against a consumer;
- (c) an adverse listing recorded in the payment profile of the consumer; or
- (d) a judgement debt.

(2) The credit bureau must remove any adverse listing contemplated in subsection (1) within seven days after receipt of such information from the credit provider.

(3) If the credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the National Credit Regulator.

(3A) Credit bureaux must remove a listing related to a successful debt intervention application—

- (a) seven days after the period contemplated in section 88C(2)(c) expires;
- (b) seven days after a period contemplated in section 88C(3)(a) or (b) expires, where the debt intervention applicant did not present his or her financial circumstances to the Tribunal for a further decision;
- (c) 12 months after the date on which the order contemplated in section 88C(4) was handed down; or
- (d) seven days after the period contemplated in section 88C(5)(b) expires, whichever is the later date.

(4) For the purposes of this section-

- (a) **'adverse classification of consumer behaviour'** means classification relating to consumer behaviour and includes a

(3A) successful debt intervention application needs to be defined as stated above.

<p>classification such as 'delinquent', 'default', 'slow paying', 'absconded', or 'not contactable'; and</p> <p>(b) 'adverse classification of enforcement action' means classification relating to enforcement action taken by the credit provider, including a classification such as 'handed over for collection or recovery', 'legal action', or 'write-off'. [S. 71A inserted by s. 22 of Act 19 of 2014.]</p>	
<p>82 Assessment mechanisms and procedures</p> <p>(1) A credit provider may determine for itself the evaluative mechanisms or models and procedures to be used in meeting its assessment obligations under section 81, provided that any such mechanism, model or procedure results in a fair and objective assessment and must not be inconsistent with the affordability assessment regulations made by the Minister. [Sub-s. (1) substituted by s. 24 (a) of Act 19 of 2014.]</p> <p>(2) The Minister must, on recommendation of the National Credit Regulator, make affordability assessment regulations. [Sub-s. (2) substituted by s. 24 (a) of Act 19 of 2014.]</p> <p>(3) and (4) [Sub-ss. (3) and (4) deleted by s. 24 (b) of Act 19 of 2014.] [Date of commencement of s. 82: 1 June 2007.]</p> <p>82A. (1) If a credit provider during an assessment contemplated in section 81(2) reasonably suspects any credit agreement included in that assessment of being a reckless credit agreement, that credit provider must report that suspected reckless credit agreement to the National Credit Regulator. (2) If a debt counsellor during an assessment contemplated in section 86(6) reasonably suspects any credit agreement included in that assessment of being</p>	<p>82A Although Section 80 and 81 defines when a Credit Agreement is reckless, no process to make the determination if the credit agreement is reckless is included in the NCA. The lack of a defined process in the NCA makes the determination of possible reckless credit difficult, time consuming, costly and almost impossible.</p>

a reckless credit agreement, that debt counsellor must report that suspected reckless credit agreement to—
(a) the National Credit Regulator where the debt counsellor rejects the application as contemplated in section 86(7)(a) or makes a recommendation contemplated in section 86(7)(b); or
(b) the Magistrate’s Court where the debt counsellor makes a recommendation contemplated in section 86(7)(b).

For any person to make a determination of possible reckless credit they will need information from the Consumer and Credit Provider. In most case the Consumers will not have the required information at hand and this means the information must be obtained from the Credit Provider. This may include copies of the pre-agreement statement, date of approval, copy of the affordability assessment, copy of the credit agreement, and proof of income, copy of payment history and Credit Bureau report and details of the financial means and obligations of the Consumer.

Only when this information has been received can an informed assessment be made to determine if the agreement is reckless or not.

When a Credit Provider completes an assessment they will not have access to the required information to make any determination and the lack of a defined process will make it impossible to detect or suspect possible reckless credit even if they decline an application for Debt.

Even if the information is requested, obtaining the affordability information and assessment from a competitor may prove to be a challenge.

The proposed Section 82A (1), without a defined process, will be impossible to implement and to enforce and will not achieve the novel idea set out in this Bill.

For Section 82A to be effective the following process needs to be defined in the NCA or Regulations:

- a) Trigger for possible reckless to be defined
- b) Information to be requested from Credit Providers to be defined within defined time frame.

	<p>c) Consumer to be protected from termination while reckless process is pending.</p> <p>A Debt Counsellor is in a similar position that a Section 86(6) application process in itself does not provide the information required for a reckless credit assessment. The same information as set out above will be required and only on receipt of the information can an assessment be made.</p> <p>The processing of a reckless credit assessment is tedious and time consuming.</p> <p>In addition to the above Debt Counsellors experience the following difficulties:</p> <ul style="list-style-type: none"> a. In terms of The Debt Counsellors fee Guidelines (set up in 2010 and never reviewed) Debt Counsellors are not allowed to charge any fee for providing this service. b. Credit Providers delay the provision of the required information with the knowledge that the Debt Review Court Application be submitted to Court within 60 Business days. c. Credit Providers normally oppose Reckless Credit applications in Court and Debt Counsellors, who may not charge a fee for providing this service to Consumers, are required to defend the Credit Providers opposition at their own cost. d. Very often a cost order is obtained against the Debt Counsellor. e. If a reckless matter is referred to the NCR and the matter is not finalised by the NCR within the first 60 business days, the Debt Counsellor has no option to refer the matter to a Court in order to protect the Consumer from termination (section 86(10)). If the
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	<p>matter is in front of Court, the NCR in terms of Section 87(2), may not intervene before the Magistrate's court in a matter referred to it. The proposed reckless referral to the NCR in terms of the Bill might be ineffective.</p> <p>From the above it should be clear that no process or motivation exist for the Debt Counsellor to pursue Reckless matters.</p> <p>Currently the onus of proof at Court is with the Debt Counsellor and obtaining the required information from Credit Providers remains challenging. In addition about 7 hours of work is required without any prospect of compensation but with prospect of Cost Order against Debt Counsellors in his personal capacity</p> <p>In order for Section 82A(2) to be effective the following is required:</p> <ul style="list-style-type: none">a. Trigger for possible reckless to be definedb. Information to be requested from Credit Providers to be defined as well as defined time frames to make the information available.c. Consumer to be protected from termination while reckless process is pending.d. Defined process to determine if a Credit Agreement is reckless to be included in act or regulations.e. Allow Debt Counsellors to be compensated for providing this service. When an agreement is reckless maybe the Credit Provider should carry the cost.f. Protection of the Debt Counsellor from victimisation by the Credit Provider (Cost Orders) for fulfilling their statutory duty.
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(3) The Tribunal may impose an administrative fine as contemplated in section 151, in respect of a credit provider or a debt counsellor who fails to report a suspected reckless credit agreement.

(4) The National Credit Regulator must investigate the report contemplated in subsections (1) and (2)(a) in accordance with section 139. (5) If the National Credit Regulator is reasonably of the view that a credit agreement reported to it as contemplated in subsections (1) and (2) is a reckless credit agreement, the National Credit Regulator must—
(a) issue a notice to the affected credit provider in the prescribed form suspending the reckless credit agreement; and
(b) refer the reckless credit agreement to the Tribunal for a declaration contemplated in section 83.
(6) Section 84 applies in respect of the suspension of a reckless credit agreement by the National Credit Regulator: Provided that where the Tribunal finds that the credit agreement is not a reckless credit agreement, section 84(2)(b) does not apply to that credit agreement.”.

- g. A referral to the NCR may be a solution only if a process to conduct reckless credit is included in Regulations.
- h. Allow NCR to proceed with Reckless Credit referral despite the fact that the Review application has been referred to a Court (matter is pending in Court). When a potential reckless matter is referred the Consumer should be protected from possible termination to remedy the current situation and practice.

(3) The lack of a defined process to determine if an agreement is reckless will result in legal uncertainty and unreasonable assessments and fines in the determination if a credit agreement may be reckless or not. Even if the agreement is not reckless the Debt Counsellor may end up with a cost order if they do refer it.

(4) The lack of a defined automated process, as stated above, will render any investigation without substance and a possible suspension may be without substance.

The lack of a defined process will result in an ineffective Section of the NCA.

As set out above, although the NCA defines reckless well the lack of a process, protection for the Consumer, lack of recognition of the role of the Debt Counsellor and the protection of the Debt Counsellors fulfilling their statutory role is the problem that needs to be addressed.

	<p>The flaws in the reckless credit process as set out above will render the proposed fine process unworkable and ill conceived.</p> <p>If (3) is implemented as proposed the legal uncertainty that already exists with a defined process coupled with the lack of protection for Debt Counsellors who fulfil a statutory duty will render this section ineffective.</p> <p>If a process is defined to identify a possible suspected reckless credit agreement, the co-operation of Credit Providers is defined and embedded in the process and the Debt Counsellor is protected from cost order applications from Credit Providers reporting to a NCR and Courts will be viable.</p> <p>Based on the proposed Section 82A no guidance is provided when a Debt Counsellor refers a matter to the Court in terms of Section 86(7)(c). As it stands at present in matters where a referral is made in terms of Section 86(&)(c) the Debt Counsellor is also obliged to refer the matter to the NCR despite having referred it to a Court.</p> <p>It would appear that the intention of the (4) is for the NCR to process the Reckless Credit reporting as a formal investigation. No process or format for the reporting of possible reckless credit has been defined. The effect of this is that "reporting" would be inconsistent in terms of quality and substance.</p> <p>No amendments to Section 139 is proposed to specifically provide guidance on the format and processing of reckless credit "complaints" which may inform the content or the reckless credit reporting to the NCR.</p>
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	<p>In terms of Section 138 the NCR may refer the reckless matter to a Debt Counsellor (Section 139(1)(b)(i)) or Ombud ((Section 139(1)(b)(ii)) or Inspector ((Section 139(1)(c). If a possible reckless matter is referred by the NCR to a Debt Counsellor. If the matter is referred to a Debt Counsellor and no reckless substance is found and reported as such to the NCR the NCT may impose an administrative fine for not reporting a reckless matter in matters where the NCR do not agree with the finding on the Debt Counsellor. This will create legal uncertainty and expose a Debt Counsellor to uncontrollable risk.</p>
<p>85 Court may declare and relieve over-indebtedness</p> <p>Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged or it appears to the court that the consumer under a credit agreement is over-indebted, the court may-</p> <ul style="list-style-type: none"> (a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86 (7); or (b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness; or <small>[Date of commencement of s. 85: 1 June 2007.]</small> (c) where the consumer may qualify for debt intervention contemplated in Chapter 4, Part E, refer the matter directly to the National Credit Regulator to evaluate the consumer's circumstances and make a recommendation to the Tribunal in terms of section 88B(4). 	<p>(c) The effect of (c) to add to the statutory duties of the NCR to conduct an assessment. In practical terms this means that the NCR is required to contact the Consumer, obtain the required information in order to formulate a recommendation to the Tribunal.</p>

	<p>In cases where Consumers select to apply for Debt Review in terms of Section 86 a Debt Counsellor is obliged to follow a statutory process to evaluate the Debt Review application and to make a determination and recommendation. In terms of Section 85(c) the Court is required to investigate, assess and refer to the NCR. It is our view that the Courts are not properly qualified to fulfil this role. How will they investigate compliance to the qualifying criteria for possible debt intervention?</p>
<p>86 Application for debt review</p> <p>(1) A consumer may apply to a debt counsellor in the prescribed manner and form to have the consumer declared over-indebted.</p> <p>(2) An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement.</p> <p>[Sub-s. (2) substituted by s. 26 (a) of Act 19 of 2014.]</p> <p>(3) A debt counsellor-</p> <ul style="list-style-type: none"> (a) may require the consumer to pay an application fee, not exceeding the prescribed amount, before accepting an application in terms of subsection (1); and (b) may not require or accept a fee from a credit provider in respect of an application in terms of this section. <p>(4) On receipt of an application in terms of subsection (1), a debt counsellor must-</p> <ul style="list-style-type: none"> (a) provide the consumer with proof of receipt of the application; (b) notify, in the prescribed manner and form- <ul style="list-style-type: none"> (i) all credit providers that are listed in the application; and (ii) every registered credit bureau. 	

(5) A consumer who applies to a debt counsellor, and each credit provider contemplated in subsection (4) (b), must-

- (a) comply with any reasonable requests by the debt counsellor to facilitate the evaluation of the consumer's state of indebtedness and the prospects for responsible debt re-arrangement; and
- (b) participate in good faith in the review and in any negotiations designed to result in responsible debt re-arrangement.

(6) A debt counsellor who has accepted an application in terms of this section must determine, in the prescribed manner and within the prescribed time-

- (a) whether the consumer appears to be over-indebted; and
- (b) **if the consumer seeks a declaration of reckless credit**, whether any of the consumer's credit agreements appear to be reckless.

(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that-

(b) The effect of the proposed amendment is that the Consumers' right to seek a declaration for reckless credit is revoked. The removal of this Consumer's right may conflict with the aim of the NCA to protect Consumer rights set out in Section 66.

The second effect of the proposed amendment is that reckless lending assessment will become a mandatory function for the Debt Counsellor but without proper consideration of how the Debt Counsellor should be compensated to perform this function. A reckless credit assessment requires a minimum of 7 hours dedicated work.

The continued failure of the NCR to review Debt Counsellors fee structures since 2010 remains an obstacle in possible reckless credit assessment which if not addressed in the proposed amendment will continue to render the proposed amendments unworkable.

- (a) the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;
 - (b) the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or
 - (c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders-
 - (i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those agreements appear to be reckless; and
 - (ii) that one or more of the consumer's obligations be re-arranged by-
 - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (bb) postponing during a specified period the dates on which payments are due under the agreement;
 - (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; or
 - (dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6.
- (8) If a debt counsellor makes a recommendation in terms of subsection (7) (b) and-
- (a) the consumer and each credit provider concerned accept that proposal, the debt counsellor must record the proposal in the form of an order, and if it is consented to by the consumer and

each credit provider concerned, file it as a consent order in terms of section 138; or

(b) if paragraph (a) does not apply, the debt counsellor must refer the matter to the Magistrate's Court with the recommendation.

(9) If a debt counsellor rejects an application as contemplated in subsection (7) (a), the consumer, with leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in subsection (7) (c).

(10) (a) If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may, at any time at least 60 business days after the date on which the consumer applied for the debt review, give notice to terminate the review in the prescribed manner to-

(i) the consumer;

(ii) the debt counsellor; and

(iii) the National Credit Regulator; and

(b) No credit provider may terminate an application for debt review lodged in terms of this Act, if such application for review has already been filed in a court or in the Tribunal.

[Sub-s. (10) substituted by s. 26 (b) of Act 19 of 2014.]

(11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.

[Sub-s. (11) substituted by s. 26 (b) of Act 19 of 2014.]

[Date of commencement of s. 86: 1 June 2007.]

Part E

Debt intervention

Application for debt intervention

88A. (1) For the purposes of this Part—

(a) ‘**debt intervention applicant**’ means a South African citizen or permanent resident that is a natural person and who on the date of submission of the application contemplated in subsection (2) is a consumer under a credit agreement and—

(i) receives no income, or if he or she receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did on an average for the six months preceding the date of the application for debt intervention not exceed R7500 per month;

(ii) has no realisable assets; and

(iii) is not subject to debt review contemplated in section 86, and includes a disabled person, a minor heading a household, or a woman heading a household;

(b) ‘**realisable asset**’ means an asset that can swiftly be converted into cash at a value that reasonably reflects the second-hand market value of that asset, but does not include—

(i) necessary tools and implements of trade, stock and agricultural implements up to a maximum of R10 000;

(ii) professional books, documents or instruments necessarily used by that debt intervention applicant in his or her profession up to a maximum of R10 000;

(iii) necessary household furniture and household utensils up to a maximum of R10 000;

(iv) necessary beds, bedding and wearing apparel of the debt intervention applicant and of members of his or her immediate household;

(a) is in direct conflict of Section 60 which stated ...“Every adult person”. The effect of the proposed amendment is the inclusion of minors who in terms of the NCA may not apply for debt.

(i) The R7500 needs to be adjusted annually.

(ii) How and who will determine “no realisable assets”?

(ii) Based on current proposed amendment a minor or woman who earn more than R7500 will qualify for debt intervention. A minor in terms of the NCA may not apply for debt. This section may also result in reduced access to debt by women heading up households.

(b) What is the reasonable definition of “swiftly”. A day, week, month or year? Who will determine reasonable second hand value? A possible conflict exists with Section 67 of the Magistrates Court Act as well.

The requirements set out in (i)(ii)(iii)(iv)(v)(vi) is unworkable and implementation and compliance with the section will be impossible and unpractical for the following reasons:

- a. In cases where Consumers are married COP (including Traditional Marriages) Credit Providers currently do not obtain the consent of the spouse when new debt is approved. If the any of the spouses apply to the NCR it should be a joint application to be effective.

(v) the supply of food and drink in the residence of the debt intervention applicant sufficient for the needs of that debt intervention applicant and of his or her immediate household, for a period of one month; and
(vi) a fund such as a pension fund or retirement annuity that has a future realisation date; and

- b. In cases where the spouse is "absent" this may lead to a situation where the other spouse cannot make use of the Debt Intervention.
- c. It is proposed that the Consumer applies with the NCR.
- d. The NCR is currently situated in one location.
- e. The NCR is not equipped to obtain and validate any of the required information.
- f. The lack of representation of the NCR close to qualifying Consumers means application in non-face to-face methods. The defined Consumers are not in a position to use electronic means to complete an application.
- g. Based on our experience Consumers with a monthly income of less than R7 500 will be challenged to provide the information required in any meaningful way.
- h. They have very limited access to airtime.
- i. They would need assistance to complete an application form.
- j. They do not have access to fax or e-mail.
- k. They will not be in a position to provide the information requested in any meaningful way.
- l. These Consumers generally comply the requirements set out in (i)(ii)(iii)(iv)(v)(vi) in any way.
- m. If required how will the information be validated and by whom.
- n. The NCR is situated in one central point and even if the Consumer is 5km away the NCR cannot validate the information if in the unlikely event that the information is supplied.
- o. How will the NCT be able to validate any of this information if supplied?

(c) 'total unsecured debt' means the total of money or other consideration contemplated in section 101(1) due by the debt intervention applicant under all the unsecured credit agreements to which the debt intervention applicant is a party.

(2) A debt intervention applicant may apply once to the National Credit Regulator in the prescribed manner and form for a debt intervention, if that debt intervention applicant has at 24 November 2017, a total unsecured debt owing to credit providers of no more than R50,000.

(3) The following credit agreements that form part of the total unsecured debt, do not qualify for the debt intervention:

(a) A developmental credit agreement contemplated in section 10; and

(b) subject to section 85(c), any credit agreement where, at the time of the application for the debt intervention, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement.

The lack of practical ability to obtain, validate the required information may well render debt intervention application un-implantable.

(c) The legal uncertainty that currently exist in the interpretation of Section 103(5) will lead to disputes in the interpretation of (c). No process is imbedded in the bill to manage disputes. Qualifying Consumers will not be in any position to detect or dispute possible contraventions of (c). The proposed process also does not include any validation process for the debt by the NCR to enable possible disputes. The lack of a proper validation process will make it extremely difficult to detect non-compliance to section 101(1).

(2) The effect of (2) is that the Consumer may have a secured debt (home, vehicle, furniture) which is excluded from the application.

In addition all debt acquired after 24 November 2017 will be excluded.

(b) The effect of (b) as proposed that the Consumer may have secured credit agreements which has not been excluded in the proposed amendment. In addition section 130 must clearly state when enforcement takes effect.

(4) The application contemplated in subsection (2) must be supported by—

(a) proof of the debt intervention applicant's daily, weekly or monthly income and expenses, supported by the most recent proof thereof in the possession of the debt intervention applicant;

(b) information confirming the total unsecured debt;

(c) credit agreements that relates to the total unsecured debt;

(d) credit insurance agreements, if any, pertaining to the debt intervention applicant's indebtedness;

(e) agreements, if any, entered into with creditors related to restructuring any of the debt intervention applicant's debt;

(f) a set out of all the assets owned by the debt intervention applicant; and

(g) such other information as may be prescribed.

(4)(a) What constitutes proof of income? Who must verify the information and how should they verify this information. Pay slip or bank statement is not available in this market segment. What about informal traders, Gardeners, Domestic Workers or Consumers that do piece work. Unless defined this process may be challenged which will exclude many Consumers who should benefit from Debt Intervention.

How can a Consumer prove expenses. Based on our experience a Debt Counsellor's proof of expenses is impossible to verify. Instead reasonable expense can be determined and verified by a suitably qualified person. The NCR staff are not trained for this purpose and neither is a NCT member. This will create uncertainty and unqualified interpretation.

(b) Based on our experience Consumers may know the monthly payment due but on all cases have no information of the outstanding amount or exact date acquired.

The proposed process has no embedded process to obtain the current outstanding value. This process is embedded in the Debt Review process.

(c) to (g) Based on our experience as Debt Counsellors, Consumers do not have a copy of the Credit Agreement, Credit insurance agreement, possible restructure agreements, list of assets and value thereof.

The process to obtain this information from Credit Providers is tedious and extremely time consuming and totally impracticable.

	<p>Consumers does not have the information required and no process is proposed to obtain this information. We also question the value of obtaining the information set out in section (c) to (g).</p> <p>What is required is a process similar to the Debt Review process where Credit Providers are notified of the application and within 5 business days are required to provide the Certificate of Balance and date acquired or information of enforcement action. This information should be used to determine qualifying criteria.</p> <p>In addition an affordability assessment by a suitably qualified person will be required to determine the possible and reasonable repayment amount or lack thereof.</p> <p>Outstanding balances and affordability assessment should be used to conclude a reasonable assessment and to structure recommendations.</p>
<p>Evaluation of application for debt intervention 88B. (1) On receipt of an application in terms of section 88A, the National Credit Regulator must— <i>(a)</i> provide the debt intervention applicant with proof of receipt of the application; <i>(b)</i> notify, in the prescribed manner and form— <i>(i)</i> all credit providers that are listed in the application; and <i>(ii)</i> every registered credit bureau; and <i>(c)</i> provide each credit provider listed in the application with a summary of the debt intervention applicant’s income, assets and liabilities. (2) A debt intervention applicant who applies for the debt intervention, and each credit provider affected by such application, must—</p>	<p>88B It is unclear what the function is of the NCR. The NCR is required to receive the information and notify Credit Providers and Credit Bureau of receipt of application without any verification or assessment.</p> <p>The NCR may also request information from Credit Providers to evaluate qualification. In addition details must be provided by the NCR on income, assets and liabilities.</p> <p>Check for reckless credit.</p> <p>Exclude secured lending.</p>

(a) comply with any reasonable requests by the National Credit Regulator to facilitate the evaluation of whether the debt intervention applicant qualifies for the debt intervention; and

(b) participate in good faith in the application for the debt intervention.

(3) When evaluating the application, the National Credit Regulator must determine whether any of the credit agreements making up the debt under consideration—

(a) may constitute reckless lending contemplated in section 80, or may constitute an unlawful transaction or a transaction resulting from prohibited conduct or dereliction of required conduct, and if so section 55 applies and the National Credit Regulator must separate that credit agreement from the application for the debt intervention;

(b) is secured or an agreement contemplated in section 88A(3), and if so, draw the Tribunal’s attention to that credit agreement so that it does not form part of the debt intervention order; or

(c) is the subject of credit insurance, and if so, assist the debt intervention applicant to claim against that credit insurance and draw the Tribunal’s attention to that credit agreement so that any part of the credit agreement that qualifies for the credit insurance does not form part of the debt intervention order.

(4) If the National Credit Regulator, taking into account the criteria set out in section 88A(2) and (3) and after having evaluated the information contemplated in section 88A(4) against that criteria, reasonably concludes that—

(a) the debt intervention applicant does not qualify for the debt intervention, the National Credit Regulator must reject the application;

(b) the debt intervention applicant does not qualify for the debt intervention, but is nevertheless experiencing, or is likely to experience, difficulty satisfying all the debt intervention applicant's obligations under credit agreements in a timely manner, the National Credit Regulator must refer the debt intervention applicant to a debt counsellor for debt review or assistance with a voluntarily plan of debt re-arrangement;

Claim on insurance policies where required.

Check qualification.

May make a recommendation to the Tribunal.

Comments on the proposed process:

- a. The NCR currently do not have skills, systems or required accreditation to perform the tasks set out in this section.
- b. The section does not define the skills and or qualification of staff required to conduct this function.
- c. No process for orderly implementation is embedded in this section.
- d. No process is envisaged for Credit Providers to provide the information required for a proper assessment, for instance Certificate of Balance date of credit agreement and possible legal action to name but a few.
- e. The implementation of the proposed duties without a defined process, automated systems and qualified staff will make implementation impossible. This is similar to the position regarding debt review in 2007 which lead to the Task Team Process rules and processes.
- f. The proposed section does not include or accommodate the rights of Credit Providers to validate, oppose assessment or any recommendations.
- g. Any possible recommendation by the NCR requires an affordability assessment, information validation, several interactions with the Consumers, reporting to

(c) a credit agreement that formed part of the application may constitute reckless lending, an unlawful credit agreement or a credit agreement resulting from prohibited behavior, or resulting from dereliction of required conduct, the National Credit Regulator may make a recommendation to the Tribunal for an appropriate declaration; or
 (d) qualifies for the debt intervention, the National Credit Regulator must make a recommendation to the Tribunal for the debt intervention to be granted to the debt intervention applicant.
 (5) Where the National Credit Regulator rejected an application for debt intervention contemplated in subsection (4)(a) or (b), sections 140(1)(a) and 141 apply with the necessary changes.

and from Credit Bureaus and credit providers and calculation of proposed repayment based on the Certificate of Balances and annual follow ups. This process will require defined skills, processes and systems which does not resonate well with the functions of the NCR as set out in the NCA.

h. There should be defined time lines for the various parties to keep to and actions in place where these time lines are not adhered to.

It is our view that the lack of a defined process and suitable qualified staff will place the NCR in an extremely compromised position which may impact on the constitutional rights of Credit Providers and consumers.

Orders related to debt intervention
88C. (1) An application for the debt intervention may be considered by a single member of the Tribunal, with reference to the documents included in the referral from the National Credit regulator only, without further evidence being led.
 (2) The Tribunal may, in addition to its other powers in terms of this Act, after having considered the referral contemplated in section 88B(4)(c) or (d) and any other relevant information—
 (a) make an order that the debt intervention applicant does not qualify for the debt intervention and reject the application;
 (b) request the National Credit Regulator to refer the debt intervention applicant to a debt counsellor for debt review or assistance with a voluntarily plan of debt re-arrangement;
 (c) where the Tribunal is of the view that debt intervention applicant could satisfy payment requirements, but an order contemplated in paragraph (b) would not be effective, determine the—
 (i) maximum interest, fees or other charges under a qualifying credit agreement for such a period as the Tribunal deem fair and reasonable but not

(1) Documents not defined.

(C)(i) and (ii). Tribunal member may amend the terms of Credit Agreement without hearing evidence from the other party. The one sided amendments of Credit Agreement is unprecedented in South African Law and may well be challenged constitutionally.

exceeding twelve months, before the expiry of which the debt intervention applicant must present his or her financial circumstances to the Tribunal for an extension of the determination for a period not exceeding twelve months or another order contemplated in this subsection: Provided that the maximum interest, fee or other charge may be zero; and
(ii) maximum monthly instalment that the debt intervention applicant can be expected to pay to the affected credit providers during the period contemplated in subparagraph (i);

(d) declare—

(i) a credit agreement reckless as contemplated in section 55 read with 83; or
(ii) a credit agreement or a provision of a credit agreement void for being unlawful, resulting from prohibited conduct or the dereliction of required conduct as contemplated in section 55;

(e) grant an order in accordance subsections (3), (4) or (5) related to the debt intervention; or

(f) grant a combination of orders.

(3) (a) If the Tribunal is of the view that the debt intervention applicant qualifies for the debt intervention, the Tribunal must suspend all of the qualifying credit agreements, in part or in full, for 12 months, before the expiry of which the debt intervention applicant must present his or her financial circumstances to the Tribunal for—

(i) an order extending the suspension for a further period of 12 months; or

(ii) an order in terms of subsection (4).

(b) Before the expiry of the further period of 12 months contemplated in paragraph (a)(i), the debt intervention applicant must present his or her financial circumstances to the Tribunal for an order in terms of subsection (4)

(ii) It is proposed that the Tribunal Member determine the monthly instalment. This would require finalisation of validation of an affordability assessment and financial calculation and it is very likely that the Tribunal Member is not qualified or trained to conduct accurate financial assessments and calculations even if they have access to a system. These tasks should be conducted by a suitably qualified person who has access to required systems to conduct these financial assessments and calculations.

3 (a) to (c): Whose task is it to obtain, assess and submit information in time before the 12 months expire. In essence the entire Debt Intervention process needs to be repeated every 12 months before the expiry of the 12 months. If this is not done the Debt Intervention process ends.

How will Consumer be required to make payments? Why not require payments via an accredited PDA. Who should monitor and check payments? When there is an unpaid or disputed payment who should contact the client?

or such other order as the Tribunal may deem appropriate taking the financial circumstances of the debt intervention applicant.

(c) The Tribunal may, in respect of a credit agreement that is partly or wholly the subject of credit insurance and where, at the time of granting the debt intervention order contemplated in paragraph (a), the claim of the debt intervention applicant against that credit insurance has not yet been finalised, postpone its order in respect of that credit agreement for such a period as the Tribunal deem reasonable to allow for the finalisation of the claim against the credit insurance.

(4) If the Tribunal is of the view that the financial circumstances of the debt intervention applicant did not sufficiently improve, during the period or extended period contemplated in subsection (3), to justify an order releasing the debt intervention applicant from the debt intervention process, or an order contemplated in subsection (2)(b), (c) or (f), the Tribunal must declare the debt under the qualifying credit agreements as extinguished: Provided that the extinguishment—

The proposed 12 months review process is flawed, cumbersome and unpractical and may leave the Consumer in a worse position if the annual review has not been completed. If the annual review has not been completed on time with the required assessment and recommendations this may open the door for Credit Providers to commence with enforcement actions. The Client's in the proposed bracket continuously change Cell phone numbers and service providers and will need to be contacted by the NCR at least 8 weeks prior to the 12 month period ending.

(c) How will the Tribunal know if Credit Insurance payments are up to date or any claim information or process in order to postpone the matter? None of the information is included in the proposed process and this will render the section useless.

(4) In order for the Tribunal to use this section a complete annual assessment with recommendations need to be done. How will the Tribunal know if payments as per order were made? No Process is in place to manage and monitor payment and no Credit Provider feedback is included in the process. Who is responsible for this task and on time delivery?

The lack of a defined process and lack of qualified skills at the NCR may well render this process unworkable and Consumers may not receive the intended Debt Intervention.

Tribunal Members will find it difficult to perform the financial and administrative duties bestowed on them in this section.

Effect of debt intervention

88D. (1) A debt intervention applicant who has filed an application for the debt intervention contemplated in section 88A(2)—
(a) may not incur any further charges under a credit facility or enter into any further credit agreement with a credit provider unless—
(i) the National Credit Regulator or Tribunal rejects the application;
(ii) the Tribunal declares all the credit agreements that formed part of the application reckless or void as contemplated in section 88C(2)(d);
(iii) the debt intervention applicant does not accept a referral contemplated in paragraph (b);
(iv) the processes contemplated in paragraph (b) have been terminated or concluded in accordance with this Act; or
(v) the period contemplated in subsection (4) has expired;
(b) must, where the National Credit Regulator or Tribunal refer the debt intervention applicant to a debt counsellor for debt review or assistance with a voluntarily plan of debt re-arrangement, and the debt intervention applicant accepts such referral, comply with the relevant provisions of this Act related to debt review or debt re-arrangement; or
(c) must, where the Tribunal grants the debt intervention, comply with any conditions that the Tribunal may impose with such an order, as well as the provisions of this section.
(2) A credit provider who receives notice of an application contemplated in section 88B(1)(b) may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until—
(a) the National Credit Regulator or Tribunal rejects the application;
(b) the debt intervention applicant does not accept a referral contemplated in section 88B(4)(b) or section 88C(2)(b);
(c) the referral processes contemplated in section 88B(4)(b) or section 88C(2)(b) have been terminated or concluded in accordance with this Act; or
(d) subject to subsection (3), the processes initiated by an order contemplated in section 88C(2)(c) or (e) have been terminated or concluded in accordance with this Act.

88D(1) Consumer who has filed an application. This does not mean a successful application. No process to undo declined application Credit Bureau listing this will require NCR updating the Credit Bureaus if decline as stated in (i).

(2) What about Consumer not making payment as per the order which should allow the Credit Provider to enforce the agreement. No provision for this has been made. How will Consumer make payment and how is this monitored and who is responsible.
In addition who will monitor unfair terminations or enforcement by Credit Providers?

(3) If the Tribunal ordered that the debt that underlies a credit agreement is extinguished, or that the credit agreement was reckless or void, the credit provider may not, in respect of the part of the debt that the order applies to, exercise or enforce by litigation or other judicial process any right or security under that credit agreement.

(4) Subject to subsection (5), a debt intervention applicant who was granted a debt intervention may not incur any further charges under a credit facility or enter into any further credit agreement with a credit provider for the period during which the Tribunal's order contemplated in section 88C(2)(c) or (e) applies.

(5) A debt intervention applicant who was granted a debt intervention may apply for developmental credit contemplated in section 10, or public interest credit contemplated in section 11.

(6) (a) A debt intervention applicant must notify the National Credit Regulator of any change in his or financial circumstances regardless of whether such change occurred—

(i) during the period between the date on which the application for the debt intervention was submitted and the date on which a decision was communicated to the debt intervention applicant; or

(ii) where an order contemplated in section 88C(2)(c), (e) or (f) was made, during the applicable period contemplated in that section.

(b) The debt intervention applicant must notify the National Credit Regulator of a change in circumstances contemplated in paragraph (a), within 60 days of the event that caused the change in circumstances.

(c) The National Credit Regulator must evaluate the change in financial circumstances contemplated in paragraph—

(i) (a)(i) and adjust the application information accordingly; or

(ii) (a)(ii) and if the change affects the effectiveness of the order or justifies changing the order, refer the matter to the Tribunal to change the order.

(7) The Tribunal may rescind or change an order for the debt intervention—

(a) if information is placed before the Tribunal showing that the debt intervention applicant who applied for the debt intervention was dishonest in his or her application; or

(3) How will the Tribunal know that the debt has been repaid? Will the NCR be responsible to manage end balance differences and obtaining paid up letters.

The proposed administrative process will require qualified skills, processes and systems at the NCR. As stated above this function is not aligned for normal NCR functions.

Failure to implement the required process at the NCR may lead to compromised Consumers who in terms of the proposed amendment has a right to apply for Debt Intervention which if not implemented correctly and timeously may result in non-implementation of Debt Intervention.

(b) if the debt intervention applicant who was granted a debt intervention fails to comply with the conditions of the order contemplated in section 88C(5), or fails to comply with the requirements of subsections (1), (4) or (6).

Application for rehabilitation

88E. (1) A debt intervention applicant who was granted an order contemplated in section 88C(2)(c), (e) or a combination including either order, may in the prescribed manner apply to the National Credit Regulator for a rehabilitation order to be granted by the Tribunal.

(2) An application for a rehabilitation order may be made at any time after an order contemplated in section 88C(2)(c), (e) or a combination including either order

was granted: Provided that the debt intervention applicant must submit proof that he or she has fulfilled the obligations that were due on the date of the application for the debt intervention, under each credit agreement affected by that order, by—

(a) payment in full to the credit provider of the value of such obligations plus interest on that amount at the prescribed rate from the date of the application; or

(b) entering into an agreement with a relevant credit provider to the effect that the value of such obligations plus interest on that amount at the prescribed rate from the date of the application has been fulfilled to the satisfaction of the credit provider.

(3) The application for a rehabilitation order must be supported by the following:

(a) A letter from each credit provider affected by an order contemplated in section 88C(2)(c), (e) or a combination including either order, confirming—

(i) receipt of the payment in full contemplated in subsection (2)(a), or that an agreement contemplated in subsection (2)(b) was entered into; and

(ii) that the debt intervention applicant has notified the credit provider in writing of his or her intent to apply for a rehabilitation order in the prescribed manner;

Any application for rehabilitation sets in motion an administrative process at the NCR to validate payment, check end balance differences, compliance to Section 101 and 103(5) obtaining paid up letters and a fresh income and expenditure information. For this suitable qualified and registered Staff and systems will be required at the NCR. As stated above these tasks are not aligned with the purpose of the NCR.

The proposed process is not practical nor complete.

(b) proof of payment in full contemplated in subsection (2)(a), or that an agreement contemplated in subsection (2)(b) was entered into, where a credit provider fails or refuses to provide the debt intervention applicant with a letter contemplated in paragraph (a);

(c) proof of the debt intervention applicant's income and expenses;

(d) a set out of all the assets owned by the debt intervention applicant; and

(e) such information as the Minister may prescribe.

(4) The National Credit Regulator must consider the application for rehabilitation and if the debt intervention application has complied with the requirements contemplated in subsection (3), refer the matter for consideration by the Tribunal.

(5) The Tribunal must notify each affected credit provider of the date on which the application for rehabilitation will be considered.

(6) The Tribunal must consider the application for rehabilitation and may grant an order that the debt intervention applicant is rehabilitated if the Tribunal is satisfied that the debt intervention applicant—

(a) complied with the requirements in subsection (3); and

(b) has shown that his or her financial position has improved to such an extent that he or she can again participate in the process of applying for credit.

(7) (a) Where the Tribunal made an order contemplated in section 88C(5)(b), the affected debt intervention applicant may apply to the Tribunal to revise that order.

(b) The application contemplated in paragraph (a) must be supported by a certificate in the prescribed form, from an accredited financial institution, stating that the affected debt intervention applicant successfully completed an approved financial literacy or budgeting skills programme.

(c) The Minister must by notice in the *Gazette* provide a list of the—

(i) accredited institutions; and

(ii) approved financial literacy or budgeting skills programmes, contemplated in paragraph (b).

(d) If the Tribunal is satisfied that the debt intervention applicant has produced the certificate contemplated in paragraph (b), the Tribunal may change the

The process required a financial assessment to determine if the Consumer is not over-indebted. Registered practitioners are required to conduct this assessment with the assistance of appropriate systems and information. Currently the NCR does not have the required skills and systems to perform this task. In addition performing these tasks will transfer the NCR to a Practitioner (who needs to be registered) instead of Regulator.

C(ii) Debt Counsellors are qualified to provide financial literacy and/or budgeting training but by definition are excluded to apply for accreditation.

period of limitation imposed under section 88C(5)(b) so that such period ends on the day of the hearing of the application contemplated in paragraph (a).
 (8) An order that the debt intervention applicant is rehabilitated, or an order contemplated in subsection (7)(d) has the effect that the rights of the debt intervention applicant contemplated in section 60 is restored.

Debt intervention to be prescribed

88F. (1) The Minister may prescribe a debt intervention measure to alleviate household debt in accordance with this section read with section 171.
 (2) A debt intervention measure contemplated in subsection (1) must address economic circumstances that—
 (a) constitutes a significant exogenous shock that caused widespread job losses;
 (b) were caused by a regional natural disaster or similar emergent and that is of grave public interest, which was identified by the Minister by notice in the *Gazette* as such; or
 (c) affect any of the groups of persons referred to in subsection (3) in such a way that no efficient or effective method to alleviate household debt is available to them.
 (3) A debt intervention measure contemplated in subsection (1) may only benefit one or more of the following consumers:
 (a) Indigent persons;
 (b) persons with an income of less than R7500, which includes disabled persons, minors heading a household and women heading a household;
 (c) persons who suffered an unforeseen loss of income in a sector identified by the Minister by notice in the *Gazette* as being subject to mass retrenchments; or
 (d) persons who are subject to adverse conditions in a sector or region identified by the Minister by notice in the *Gazette* as such.
 (4) A debt intervention measure contemplated in subsection (1) may consist of one or more of the following measures only:
 (a) Determining the maximum interest, fee or other charges applicable under a credit agreement for a specific period;

The centralisation of wide reaching powers to prescribe debt intervention will have a negative impact on access to debt. It might well have the effect of red zoning potential high risk industries.

The section to limit debt intervention to “Indigent persons” could well impact on the availability of debt for low income earners.

This section if implemented may create intended economic uncertainties which will have a negative impact on the credit market.

(b) suspending the enforcement of a credit agreement for a period of not more than 12 months: Provided that the period may be extended for a further period of 12 months;

(c) declaring debts under a credit agreement as extinguished;

(d) providing for a liquidation process for consumers with minimal assets and minimal income; or

(e) providing for a combination of any of the measures contemplated in paragraphs (a) to (d).

(5) Before prescribing a debt intervention measure contemplated in subsection (1), the Minister must—

(a) consult—

- (i) the Minister responsible for finance;
- (ii) the Minister responsible for justice;
- (iii) the National Credit Regulator and the Tribunal; and
- (iv) the credit industry;

(b) table a report in the National Assembly referred to in section 42(1)(a) of the Constitution on the consultations conducted in paragraph (a);

(c) consult the National Assembly referred to in section 42(1)(a) of the Constitution, and where the debt intervention measure proposed falls outside of the criteria referred to in subsections (2) and (3), or if a different debt intervention measure from that contemplated in subsection (4) is proposed, obtain the permission of the National Assembly to proceed;

(d) publish a notice in the *Gazette* stating that he or she intends to prescribe a debt intervention measure, indicating the—

- (i) type of debt intervention measure to be prescribed;
- (ii) group of consumers who will qualify for the measure;
- (iii) type or value of the debt that will qualify for the measure;
- (iv) process for application and approval of the measure; and
- (v) consequences of the measure,

and must provide interested parties at least 30 days within which to comment thereon; and

(e) after consideration of the comments contemplated in paragraph (d), table in the National Assembly a report on the comments received and the debt

<p>intervention measure that the Minister intends to introduce for consideration and comment.</p>	
<p>89 Unlawful credit agreements</p> <p>(1) This section does not apply to a pawn transaction.</p> <p>(2) Subject to subsections (3) and (4), a credit agreement is unlawful if-</p> <ul style="list-style-type: none"> (a) at the time the agreement was made the consumer was an unemancipated minor unassisted by a guardian, or was subject to- <ul style="list-style-type: none"> (i) an order of a competent court holding that person to be mentally unfit; or (ii) an administration order referred to in section 74 (1) of the Magistrates' Courts Act, and the administrator concerned did not consent to the agreement, and the credit provider knew, or could reasonably have determined, that the consumer was the subject of such an order; (b) the agreement results from an offer prohibited in terms of section 74 (1); (c) it is a supplementary agreement or document prohibited by section 91 (a); (d) at the time the agreement was made, the credit provider was unregistered and this Act requires that credit provider to be registered; or (e) the credit provider was subject to a notice by the National Credit Regulator or a provincial credit regulator requiring the credit provider- <ul style="list-style-type: none"> (i) to stop offering, making available or extending credit under any credit agreement, or agreeing to do any of those things; or 	

(ii) to stop offering, making available or extending credit under the particular form of credit agreement used by the credit provider,

whether or not this Act requires that credit provider to be registered, and no further appeal or review is available in respect of that notice.

(3) Subsection (2) (a) does not apply to a credit agreement if the consumer, or any person acting on behalf of the consumer, directly or indirectly, by an act or omission-

- (a) induced the credit provider to believe that the consumer had the legal capacity to contract; or
- (b) attempted to obscure or suppress the fact that the consumer was subject to an order contemplated in that paragraph.

(4) Subsection (2) (d) does not apply to a credit provider if-

- (a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application; or
- (b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the National Credit Regulator in terms of section 42 (3) (b).

(5) If a credit agreement is unlawful in terms of this section, despite any other legislation or any provision of an agreement to the contrary, a court **or the Tribunal, as the case may be,** must make a just and equitable order including but not limited to an order that-

- (a) the credit agreement is void as from the date the agreement was entered into.
- (b) and (c)

[Paras. (b) and (c) deleted by s. 27 (b) of Act 19 of 2014.]

[Sub-s. (5) amended by s. 27 (b) and (a) of Act 19 of 2014.]

[Date of commencement of s. 89: 1 June 2007.]

90 Unlawful provisions of credit agreement

- (1) A credit agreement must not contain an unlawful provision.
- (2) A provision of a credit agreement is unlawful if-
 - (a) its general purpose or effect is to-
 - (i) defeat the purposes or policies of this Act;
 - (ii) deceive the consumer; or
 - (iii) subject the consumer to fraudulent conduct;
 - (b) it directly or indirectly purports to-
 - (i) waive or deprive a consumer of a right set out in this Act;
 - (ii) avoid a credit provider's obligation or duty in terms of this Act;
 - (iii) set aside or override the effect of any provision of this Act;
 - (iv) authorise the credit provider to-
 - (aa) do anything that is unlawful in terms of this Act; or
 - (bb) fail to do anything that is required in terms of this Act;
 - (c) it purports to waive any common law rights that-
 - (i) may be applicable to the credit agreement; and
 - (ii) have been prescribed in terms of subsection (5);
 - (d) the provision results from an offer prohibited in terms of section 74 (2) or (3);
 - (e) it purports to make the agreement subject to a supplementary agreement prohibited by section 91 (a);
 - (f) it requires the consumer to enter into a supplementary agreement, or sign a document, prohibited by section 91 (a); or
 - (g) it purports to exempt the credit provider from liability, or limit such liability, for-
 - (i) any act, omission or representation by a person acting on behalf of the credit provider; or

- (ii) any guarantee or warranty that would, in the absence of such a provision, be implied in a credit agreement;
- (h) it expresses an acknowledgement by the consumer that-
 - (i) before the agreement was made, no representations or warranties were made in connection with the agreement by the credit provider or a person on behalf of the credit provider; or
 - (ii) the consumer has received goods or services, or a document that is required by this Act to be delivered to the consumer, which have or has not in fact been delivered or rendered to the consumer;
- (i) it expresses an agreement by the consumer to forfeit any money to the credit provider if the consumer-
 - (i) exercises the right of rescission in terms of section 121, except to the extent contemplated in section 121 (3) (b); or
 - (ii) fails to comply with a provision of the agreement before the consumer receives any goods or services in terms of the agreement;
- (j) it purports to appoint the credit provider, or any employee or agent of the credit provider, as an agent of the consumer for any purpose other than those contemplated in section 102 or deems such an appointment to have been made;
- (k) it expresses, on behalf of the consumer-
 - (i) an authorisation for any person acting on behalf of the credit provider to enter any premises for the purposes of taking possession of goods to which the credit agreement relates; or
 - (ii) a grant of a power of attorney in advance to the credit provider in respect of any matter related to the granting of credit in terms of this Act;
 - (iii) an undertaking to sign in advance any documentation relating to enforcement of the agreement, irrespective of whether such documentation is complete or incomplete at the time it is signed;

- (iv) a consent to a pre-determined value of costs relating to enforcement of the agreement except to the extent that is consistent with Chapter 6;
- (v) a limitation of the credit provider's liability for an action contemplated in subparagraph (iv); or
- (vi) a consent to the jurisdiction of-
 - (aa) the High Court, if the magistrate's court has concurrent jurisdiction; or
 - (bb) any court seated outside the area of jurisdiction of a court having concurrent jurisdiction and in which the consumer resides or works or where the goods in question (if any) are ordinarily kept;
- (l) it expresses an agreement by the consumer to-
 - (i) deposit with the credit provider, or with any other person at the direction of the credit provider, an identity document, credit or debit card, bank account or automatic teller machine access card, or any similar identifying document or device; or
 - (ii) provide a personal identification code or number to be used to access an account;
- (m) it purports to direct or authorise any person engaged in processing payments to give priority to payments for the credit provider over any other credit provider;
- (n) it purports to authorise or permit the credit provider to satisfy an obligation of the consumer by making a charge against an asset, account, or amount deposited by or for the benefit of the consumer and held by the credit provider or a third party, except by way of a standing debt arrangement, or to the extent permitted by section 124; or
- (o) it states or implies that the rate of interest is variable, except to the extent permitted by section 103 (4).

(3) In any credit agreement, a provision that is unlawful in terms of this section is void as from the date that the provision purported to take effect.

(4) In any matter before it respecting a credit agreement that contains a provision contemplated in subsection (2), the court or the Tribunal, as the case may be, must-

- (a) sever that unlawful provision from the agreement, or alter it to the extent required to render it lawful, if it is reasonable to do so having regard to the agreement as a whole; or
- (b) declare the entire agreement unlawful as from the date that the agreement, or amended agreement, took effect,

and make any further order that is just and reasonable in the circumstances to give effect to the principles of section 89 (5) with respect to that unlawful provision, or entire agreement, as the case may be.

(5) The Minister may prescribe particular common law rights that may not be waived in a credit agreement on the grounds that the waiver of those rights would be inconsistent with the purposes of this Act as set out in section 3.

[Date of commencement of s. 90: 1 June 2007.]

106 Credit insurance

(1) A credit provider may require a consumer to maintain during the term of their credit agreement-

(a) where section (1A) is not applicable to the credit agreement, credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement; and

(b) [either]- credit insurance, other than credit life insurance -

(i) in the case of a mortgage agreement, , [insurance cover] in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or

(ii) in [any other] case of a credit agreement that deals with movable property, [insurance cover] against damage or loss of [any] the property [other than property referred to in subparagraph (i)], that forms the subject matter of the credit agreement, not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement.

“(1A) Where the term of a credit agreement exceeds six months and the principal debt does not exceed R50 000, the affected credit provider and consumer must enter into credit life insurance for the duration of the term of that credit agreement not exceeding, at any time during the life of the credit agreement, the total of the consumer’s outstanding obligations to the credit provider in terms of that credit agreement.

(1A) this Section will exclude short term debt which may make up a sizable portion of the Consumers debt which in the case of retrenchment will need to be repaid (often for periods exceeding 6 months.

It is proposed and the definition be amended to include all unsecured debt.

(2) Despite subsections (1) and (1A), a credit provider must not offer or demand that the consumer purchase or maintain insurance that is-

- (a) unreasonable; or
- (b) at an unreasonable cost to the consumer; or
- (c) to cover a risk that reasonably cannot arise in respect of the consumer involved,

having regard to the actual risk and liabilities involved in the credit agreement.

(3) In addition to insurance that may be required in terms of subsections (1) and (1A), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement.

(4) If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsections (1) and (1A) or (3)-

- (a) the consumer must be given, and be informed of, the right to waive that proposed policy and substitute a policy of the consumer's own choice, subject to subsection (6);
- (b) such policy must provide for payment of premiums by the consumer-
 - (i) on a monthly basis in the case of small and intermediate agreements; or
 - (ii) on a monthly or annual basis in the case of large agreements,for the duration of the credit agreement; and
- (c) in the case of an annual premium the premium must be recovered from the consumer within the applicable year.

(5) With respect to any policy of insurance arranged by a credit provider as contemplated in subsection (4), the credit provider must-

- (a) not add any surcharge, fee or additional premium above the actual cost of insurance arranged by that credit provider;

- (b) disclose to the consumer in the prescribed manner and form-
 - (i) the cost to the consumer of any insurance supplied; and
 - (ii) the amount of any fee, commission, remuneration or benefit receivable by the credit provider, in relation to that insurance;
- (c) explain the terms and conditions of the insurance policy to the consumer and provide the consumer with a copy of that policy; and
- (d) be a loss payee under the policy up to the settlement value at the occurrence of an insured contingency only and any remaining proceeds of the policy must be paid to the consumer.

(6) If the consumer exercises the right under subsection (4) (a) to substitute an insurance policy of the consumer's own choice, the credit provider may require the consumer to provide the credit provider with the following written directions-

- (a) a valid direction in the prescribed manner and form requiring and permitting the credit provider to pay any premiums due under that policy during the term of the credit agreement on behalf of the consumer as they fall due, and to bill the consumer for the amount of such premiums;
 - (i) on a monthly basis for small and intermediate agreements; and
 - (ii) on a monthly or annual basis for large agreements; and
- (b) a valid direction to the insurer in the prescribed manner and form, naming the credit provider as a loss payee under the policy up to the settlement value at the happening of an insured contingency, and requiring the insurer, if an insured event occurs, to settle the consumer's obligation under the credit agreement as a first charge against the proceeds of that policy at any time during the term of the credit agreement.

(7) If the premiums under an insurance policy contemplated in this section are paid annually, the consumer is entitled, upon settlement of the credit agreement, to a refund of the unused portion of the final year's premium.

(8) (a) The Minister may, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit insurance that a credit provider may charge a consumer.

[Sub-s. (8) added by s. 30 of Act 19 of 2014.]
[Date of commencement of s. 106: 1 June 2007.]

(b) The Minister must, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit life insurance contemplated in subsection (1A) that a credit provider may charge a consumer.

Part C

Debt enforcement by repossession or judgment (ss 129-133)

129 Required procedures before debt enforcement

(1) If the consumer is in default under a credit agreement, the credit provider-

- (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and
- (b) subject to section 130 (2), may not commence any legal proceedings to enforce the agreement before-
 - (i) first providing notice to the consumer, as contemplated in paragraph (a), or in section 86 (10), as the case may be; and
 - (ii) meeting any further requirements set out in section 130.

(2) Subsection (1) does not apply to a credit agreement that is subject to a debt restructuring order, or to proceedings in a court that could result in such an order.

(3) Subject to subsection (4), a consumer may at any time before the credit provider has cancelled the agreement, remedy a default in such credit agreement by paying to the credit provider all amounts that are overdue, together with the credit provider's prescribed default administration charges and reasonable costs of enforcing the agreement up to the time the default was remedied.

[Sub-s. (3) substituted by s. 32 (a) of Act 19 of 2014.]

(4) A credit provider may not reinstate or revive a credit agreement after-

(a) the sale of any property pursuant to-

(i) an attachment order; or

(ii) surrender of property in terms of section 127;

(b) the execution of any other court order enforcing that agreement; or

(c) the termination thereof in accordance with section 123; or

[Sub-s. (4) amended by s. 32 (b) of Act 19 of 2014.]

(d) the Tribunal ordered that the debt that underlies a credit agreement is extinguished, or that the credit agreement was reckless or void.

(5) The notice contemplated in subsection (1) (a) must be delivered to the consumer-

(a) by registered mail; or

(b) to an adult person at the location designated by the consumer.

[Sub-s. (5) added by s. 32 (c) of Act 19 of 2014.]

(6) The consumer must in writing indicate the preferred manner of delivery contemplated in subsection (5).

[Sub-s. (6) added by s. 32 (c) of Act 19 of 2014.]

(7) Proof of delivery contemplated in subsection (5) is satisfied by-

(a) written confirmation by the postal service or its authorised agent, of delivery to the relevant post office or postal agency; or

(b) the signature or identifying mark of the recipient contemplated in subsection (5) (b).

[Sub-s. (7) added by s. 32 (c) of Act 19 of 2014.]

[Date of commencement of s. 129: 1 June 2007.]

130 Debt procedures in a Court

(1) Subject to subsection (2), a credit provider may approach the court for an order to enforce a credit agreement only if, at that time, the consumer is in default and has been in default under that credit agreement for at least 20 business days and-

- (a) at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 (10), or section 129 (1), as the case may be;
[Para. (a) substituted by s. 33 of Act 19 of 2014.]
- (b) in the case of a notice contemplated in section 129 (1), the consumer has-
 - (i) not responded to that notice; or
 - (ii) responded to the notice by rejecting the credit provider's proposals; and
- (c) in the case of an instalment agreement, secured loan, or lease, the consumer has not surrendered the relevant property to the credit provider as contemplated in section 127.

(2) In addition to the circumstances contemplated in subsection (1), in the case of an instalment agreement, secured loan, or lease, a credit provider may approach the court for an order enforcing the remaining obligations of a consumer under a credit agreement at any time if-

- (a) all relevant property has been sold pursuant to-
 - (i) an attachment order; or
 - (ii) surrender of property in terms of section 127; and
- (b) the net proceeds of sale were insufficient to discharge all the consumer's financial obligations under the agreement.

(3) Despite any provision of law or contract to the contrary, in any proceedings commenced in a court in respect of a credit agreement to which this Act applies, the court may determine the matter only if the court is satisfied that-

- (a) in the case of proceedings to which sections 127, 129 or 131 apply, the procedures required by those sections have been complied with;
- (b) there is no matter arising under that credit agreement, and pending before the Tribunal, that could result in an order affecting the issues to be determined by the court; and
- (c) that the credit provider has not approached the court-
 - (i) during the time that the matter was before a debt counsellor, alternative dispute resolution agent, consumer court or the ombud with jurisdiction; or
 - (ii) despite the consumer having-
 - (aa) surrendered property to the credit provider, and before that property has been sold;
 - (bb) agreed to a proposal made in terms of section 129 (1) (a) and acted in good faith in fulfilment of that agreement;
 - (cc) complied with an agreed plan as contemplated in section 129 (1) (a); or
 - (dd) brought the payments under the credit agreement up to date, as contemplated in section 129 (1) (a).

(4) In any proceedings contemplated in this section, if the court determines that-

- (a) the credit agreement was reckless as described in section 80, the court must make an order contemplated in section 83;
- (b) the credit provider has not complied with the relevant provisions of this Act, as contemplated in subsection (3) (a), or has approached the court in circumstances contemplated in subsection (3) (c) the court must-
 - (i) adjourn the matter before it; and
 - (ii) make an appropriate order setting out the steps the credit provider must complete before the matter may be resumed;
- (c) the credit agreement is subject to a pending debt review in terms of Part D of Chapter 4, the court may-

<ul style="list-style-type: none"> (i) adjourn the matter, pending a final determination of the debt review proceedings; (ii) order the debt counsellor to report directly to the court, and thereafter make an order contemplated in section 85 (b); or (iii) if the credit agreement is the only credit agreement to which the consumer is a party, order the debt counsellor to discontinue the debt review proceedings, and make an order contemplated in section 85 (b); <p>(d) there is a matter pending before the Tribunal, as contemplated in subsection (3) (b), the court may-</p> <ul style="list-style-type: none"> (i) adjourn the matter before it, pending a determination of the proceedings before the Tribunal; or (ii) order the Tribunal to adjourn the proceedings before it, and refer the matter to the court for determination; or <p>(e) the credit agreement –</p> <ul style="list-style-type: none"> (i) is either suspended or subject to a debt re-arrangement order or agreement, and the consumer has complied with that order or agreement; or (ii) was declared reckless or void by the Tribunal, or the Tribunal ordered that the debt underlying that credit agreement was extinguished, <p>the court must dismiss the matter.</p> <p>[Date of commencement of s. 130: 1 June 2007.]</p>	
<p>137 Initiating applications to Tribunal</p> <p>(1) The National Credit Regulator may apply to the Tribunal in the prescribed manner and form-</p> <ul style="list-style-type: none"> (a) for an order resolving a dispute over information held by a credit bureau, in terms of Part B of Chapter 4; 	

[NB: Para. (a) has been deleted by s. 110 of the Protection of Personal Information Act 4 of 2013, a provision which will be put into operation by proclamation.]

- (b) for an order compelling the delivery of a statement of account or a review of a statement in terms of Part D of Chapter 5;
- (c) to review the conduct of a sale of goods in terms of section 127 or the distribution of proceeds from such a sale;
- (d) for leave to bring a complaint directly before the Tribunal; or
- (e) for an order condoning late filing.

(1A) The National Credit Regulator refers applications for the debt intervention contemplated in section 88A to the Tribunal in accordance with section 88B(4)(d), or as may be prescribed in accordance with section 88F.

(2) A registrant, or applicant for registration, may file an application in terms of section 59 at any time within-

- (a) 20 business days after the National Credit Regulator makes the decision that is the subject of the application; or
- (b) such longer time as the Tribunal may allow on good cause shown.

(3) A consumer or credit provider who has unsuccessfully attempted to resolve a dispute directly with the other party and through alternative dispute resolution in terms of section 134 (4) may file an application contemplated in this Act at any time within-

- (a) 20 business days after the failure of the attempted alternative dispute resolution; or
- (b) such longer time as the Tribunal may allow on good cause shown.

(4) The National Credit Regulator may intervene before the Tribunal in respect of any application contemplated in this section in which the National Credit Regulator is not already a party.

Part D
Tribunal consideration of complaints, applications and referrals (ss 142-148)

142 Hearings before Tribunal

(1) The Tribunal must conduct its hearings in public-

- (a) in an inquisitorial manner;
- (b) as expeditiously as possible;
- (c) as informally as possible; and
- (d) in accordance with the principles of natural justice.

(2) Despite subsection (1), the Tribunal member presiding at a hearing may exclude members of the public, or specific persons or categories of persons, from attending the proceedings-

- (a) if evidence to be presented is confidential information, but only to the extent that the information cannot otherwise be protected;
- (b) if the proper conduct of the hearing requires it; or
- (c) for any other reason that would be justifiable in civil proceedings in a High Court.

(3) The Chairperson of the Tribunal must assign any of the following matters to be heard by a single member of the Tribunal, sitting alone:

- (a) Any application by a consumer or credit provider in terms of section 137 (3);
- (b) consent orders in terms of this Act or the Consumer Protection Act, 2008;
[Para. (b) substituted by s. 121 (1) of Act 68 of 2008.]
- (c) applications to permit late filing;
- (d) review of requests for additional information, in terms of section 45 (2);
- (e) review of an order to cease engaging in an activity, in terms of section 54;
- (f) applications for an order limiting consumer requests in terms of section 62, 65, 72, 110 or 113; or

(fA) consideration of a debt intervention application contemplated in section 88B(4)(d), or as may be prescribed in accordance with section 88F; or

(g) applications for an order concerning the remittance of proceeds of sale, in terms of section 127 or 131.

(3A) The single member of the Tribunal may consider an application for debt intervention contemplated in section 88B(4)(d), or as may be prescribed in accordance with section 88F, with reference to the documents included in the referral from the National Credit Regulator only, without further evidence being led.

(4) At the conclusion of a hearing, the Tribunal must make an order permitted in the circumstances in terms of this Act, or the Consumer Protection Act, 2008, and must issue written reasons for its decisions.
[Sub-s. (4) substituted by s. 121 (1) of Act 68 of 2008.]

(5) The Tribunal must provide the participants and members of the public reasonable access to the record of each hearing, subject to any ruling to protect confidential information made in terms of subsection (2) (a).

152 Status and enforcement of orders

(1) Any decision, judgment or order of the Tribunal may be served, executed and enforced as if it were an order of the High Court, and is binding on-

(a) the National Credit Regulator, or the National Consumer Commission, in the case of a matter arising in terms of the Consumer Protection Act, 2008;
[Para. (a) amended by s. 121 (1) of Act 68 of 2008.]

(b) provincial credit regulators, or provincial consumer protection authority, in the case of a matter arising in terms of the Consumer Protection Act, 2008;
[Para. (b) amended by s. 121 (1) of Act 68 of 2008.]

(c) a consumer court;

(d) an alternative dispute resolution agent or the ombud with jurisdiction, or, in the case of a matter arising in terms of the

<p>Consumer Protection Act, 2008, an alternative dispute resolution agent as defined in that Act; [Para. (d) amended by s. 121 (1) of Act 68 of 2008.]</p> <p>(e) a debt counsellor; and (eA) a credit provider; (eB) a consumer; and (f) a Magistrate's Court.</p> <p>(2) The National Credit Regulator, or the National Consumer Commission, in the case of a matter arising in terms of the Consumer Protection Act, 2008, may institute proceedings in the High Court on its own behalf for recovery of an administrative fine imposed by the Tribunal. [Sub-s. (2) amended by s. 121 (1) of Act 68 of 2008.]</p> <p>(2) A proceeding under subsection (2) may not be initiated more than three years after the imposition of the administrative fine.</p>	
<p>Offences related to debt intervention</p> <p>157A. (1) Intentionally submitting false information in an application for the debt intervention, or presenting information in an application for the debt intervention in a manner that is intended to mislead the National Credit Regulator or Tribunal, is an offence.</p> <p>(2) Any person who deliberately alters his or her financial circumstances in order to qualify for the debt intervention, is guilty of an offence.</p>	<p>Who will be required to monitor Debt Interventions?</p> <p>It would appear that this function will be fulfilled by the NCR who may be compromised in cases where the Debt Intervention process was not implemented correctly by the NCR.</p>

Offences related to credit agreements generally

157B. (1) A credit provider who—
(a) participates in an unlawful credit marketing practice contemplated in section 74(2) and (3), 75(1) or section 91;
(b) does not comply with the limitations to entering into a credit agreement at a private dwelling contemplated in section 75(2);
(c) does not comply with the limitations related to visiting or entering into a credit agreement at a person's place of employment contemplated in section 75(3);
(d) fails to comply with section 81(3) by entering into a reckless credit agreement with a prospective consumer;
(e) enters into an unlawful agreement contemplated in section 89(2) with a prospective consumer;

Should the NCR perform the Debt Intervention tasks it is proposed that the new class registration be included in the NCA to define the required qualifications, experience of NCR staff that will perform Debt Intervention processing tasks.

However no provision is made in this section on how the NCR is required to regulate itself and possible remedies and penalties for non-compliance.

It is proposed that suitable penalties for non-compliance by the NCR be included.

Clarity is also required how charges be laid, prosecuted, who will define the charge sheet, time lines for the process and the right to defend and appeal.

(f) includes an unlawful provision contemplated in section 90 in a credit agreement with a prospective consumer; or

(g) offers or demands that a consumer purchases or maintains insurance that is unreasonable, at an unreasonable cost, or is to cover a risk that reasonably cannot arise in respect of that consumer, as contemplated in section 106(2)(a), (b) or (c) respectively, commits an offence.

(2) Any person who sells a debt under a credit agreement to which this Act applies and that has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969) as contemplated by section 126B(1)(a), commits an offence.

(3) Any person who continues the collection of, or re-activates a debt under a credit agreement to which this Act applies under the circumstances contemplated in section 126B(1)(b), commits an offence.

Offences related to registration

157C. (1) Any person who gives him or herself out as—

(a) a credit provider, without having been registered under section 39 or section 40, as may be applicable;

(b) a credit provider of developmental credit, without having been registered under section 41;

(c) a credit bureau, without having been registered under section 43;

(d) a debt counsellor, without having been registered under section 44;

(e) a payment distribution agent, without having been registered under section 44A; or

(f) an alternative dispute resolution agent, without having been registered under section 134A, commits an offence.

(2) Subsection (1)(a) and (b) does not apply to a credit provider if—

(a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application; or

<p>(b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the National Credit Regulator in terms of section 42(3)(b).</p> <p>Offence by company</p> <p>157D. (1) Where the person who committed an offence in terms of this Act is a company, every director or prescribed officer of the company who knowingly was a party to the contravention, is, subject to the provisions of this Act and any other law, guilty of an offence and subject to the same penalties as if such director or prescribed officer committed the offence in person.</p>	
<p>Penalties</p> <p>(1) Any person convicted of an offence in terms of this Act, is liable-</p> <p>(a) in the case of a contravention of section 160 (1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; or</p> <p>(aA) in the case of a contravention contemplated in section 157A, to—</p> <p>(i) a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment; and</p> <p>(ii) a permanent prohibition on applying for a debt intervention;</p> <p>(aB) in the case of a contravention contemplated in section 157B or 157C to a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater; or</p> <p>(b) in any other case not listed in paragraphs (a), (aA) or (aB), to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.</p> <p>(2) When determining an appropriate penalty, the following factors must be considered:</p> <p>(a) The nature, duration, gravity and extent of the contravention;</p>	

<p>(b) any loss or damage suffered as a result of the contravention;</p> <p>(c) the behaviour of the person convicted of an offence in terms of this Act;</p> <p>(d) the market circumstances in which the contravention took place;</p> <p>(e) the value of the credit agreement that formed the basis for the commission of the offence;</p> <p>(f) the degree to which the person convicted of an offence in terms of this Act has co-operated with the National Credit Regulator or Tribunal; and</p> <p>(g) whether the person convicted of an offence in terms of this Act has previously been found in contravention of this Act.</p> <p>(3) For purposes of determining the appropriate penalty contemplated in subsection (1)(aB), annual turnover must be calculated in accordance with section 151(4).</p> <p>(4) Despite anything to the contrary contained in any other law, a Magistrate's Court has jurisdiction to impose any penalty provided for in this Act.</p>	
<p>164 Civil actions and jurisdiction</p> <p>(1) [Nothing in this Act renders void a] A credit agreement or a provision of a credit agreement that, in terms of this Act, is prohibited or may be declared unlawful is not void unless a court or the Tribunal, as the case may be, declares that agreement or provision to be unlawful.</p>	
<p>165 Variation of order</p> <p>(1) The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may vary change or rescind its decision or order-</p> <p>(a) erroneously sought or granted in the absence of a party affected by it;</p>	

<p>(b) in which there is ambiguity, or an obvious error or omission, but only to the extent of correcting that ambiguity, error or omission; or</p> <p>(c) made or granted as a result of a mistake common to all the parties to the proceedings.</p> <p>(2) The Tribunal may change or rescind an order—</p> <p>(a) if information is placed before the Tribunal showing that a party to the proceedings was dishonest in respect of any fact or argument placed before the Tribunal; or</p> <p>(b) if the person affected by that order fails to comply with the conditions of the order or fails to comply with this Act.’</p>	
<p style="text-align: center;">CHAPTER 9 GENERAL PROVISIONS (ss 171-173)</p> <p>171 Regulations</p> <p>(1) The Minister-</p> <p>(a) may make any regulations expressly authorised or contemplated elsewhere in this Act, in accordance with subsection (2);</p> <p>(b) in consultation with the National Credit Regulator, may make regulations for matters relating to the functions of the National Credit Regulator, including-</p> <ul style="list-style-type: none"> (i) forms; (ii) time periods; (iii) information required; (iv) additional definitions applicable to those regulations; (v) filing fees; (vi) access to confidential information; and (vii) manner and form of participation in National Credit Regulator procedures; 	

(bA) must make regulations establishing a financial literacy and budgeting skills programme to assist consumers to manage their financial position;

(c) in consultation with the Chairperson of the Tribunal, and by notice in the *Gazette*, may make regulations for matters relating to the functions of the Tribunal and rules for the conduct of matters before the Tribunal; and

(d) may make regulations regarding-

(i) any forms required to be used for the purposes of this Act; and

(ii) in general, any ancillary or incidental matter that is necessary to prescribe for the proper implementation or administration of this Act.

(2) Before making any regulations in terms of subsection (1) (a), the Minister-

(a) must publish the proposed regulations for public comment; and

(b) may consult the National Credit Regulator and provincial regulatory authorities.

(3) A regulation in terms of this Act must be made by notice in the *Gazette*.