

NDCA Feedback and comments on National Credit Amendment Bill – addendum with specific comments on the bill

Overall comments

The bill's intention is (from what we can understand) create a once-off intervention to “extinguish the debt” of those who qualify. Those who qualify are described as (pretty much) anyone who earns below R7.5k per month and has less than R50k of unsecured debt at a point in time (on Nov 27, 2017 one would need to assume?). It is not known how many individuals would fall within these criteria. In addition, the coverage is very wide: without any qualifying criteria, such as having the ability to pay back the debt, anyone earning less than R7.5k reported income would qualify. We believe some qualifying criteria need to be introduced.

Specific comments

Amendment of section 15

(HA) and (HB)

HA: This should be the Debt Counsellor

HB: This should be the NCT

Amendment of section 27

Perhaps rephrase as the following:

insert in paragraph a) after subparagraph i)

ii) a referral that may be made to it in terms of this Act....

Renumber a) ii) to a) iii)

Amendment of section 43

We agree with the changes – we propose that the reporting of debt intervention applications be done via NCR's Debthelp system (DHS) to help manage a centralized database.

Amendment of section 69

a) Inserting a register for debt intervention: This doesn't seem to fit with the heading of the section relating to a register of credit agreements? The NCR must keep a register of applications for debt intervention. “Upon entering into a credit agreement..., the credit provider must report either directly to the national register, OR to a credit bureau...”

Same applies for termination or satisfaction of credit agreement.

The intention is not clear here – why is it national register OR credit bureau? It is the same wording in the existing ACT, but we obviously don't have debt intervention yet.

Amendment of section 70

a) None

b) The addition is fine but we believe the same should apply to Debt Counselling.

Insertion of section 82A

Comments: Overall, this section is quite concerning for debt counsellors. By shifting the onus on the DC to investigate reckless lending, we believe DCs would be placed in an almost impossible situation.

For example, how would a DC prove or not that they did an investigation? In addition, the budget presented to the DC can be very different to the budget presented to the CP. Therefore, it is very alarming that the onus is placed on the DC – who would determine whether the budget presented to credit provider or DC was the accurate one?

More specifically:

- a. If a DC is to refer reckless lending matters to the NCR during an assessment that is rejected, the assessment fee of R50 would need to increase
- b. No reference is made to how the matters should be referred to the NCR as well as timeframes – what does a “referral” mean? Is it an email, a phone call, a letter, SMS?
- c. No reference is made to consent orders being referred to the NCT. How would reckless lending matters be sent to the NCT is unclear?
- d. Is the NCR bound by any timeframes to investigate the matter?
- e. The fine to a DC is impractical as this only applies to rejected applications i.e. all rejected applications could in theory be sent to the NCR to check for “reasonably suspected” reckless credit agreements
- f. The NCR must investigate the cases in accordance with S139. This in turn states that the NCR may refer the matter to a DC for reckless lending matters, so this appears to be a circular referral?

Other comments: “If a credit provider during an assessment contemplated in section 81(2) reasonably suspects any credit agreement...”. Should rather be “has reasonable grounds” – suspects is too wide reaching.

Tribunal may impose an administrative fine on the CP or DC – it is not clear this would work? CP’s would need to report other CP’s? This would be an impractical and sensitive matter.

The NCR can suspend the reckless credit agreement and refer the matter to the Tribunal – can the CP object the matter at the Tribunal stage and provide evidence?

Substitution of S85

We do not agree with inserting (C) for the court to refer a debt intervention matter to the NCR. This should be referred to a DC but is already taken care of via (b) over-indebted

We don’t see a definition for “court” in the existing NCA.

“court may refer the matter directly to a debt counsellor...” How would the Court decide on the DC – surely referring to a particular DC needs to be done on a transparent, fair, and auditable process to ensure there is no favoritism?

Addition of Part E chapter 4

Comments

88A

Here, we believe the existing infrastructure of debt counsellors must be utilized in a more robust way to ensure more consumers can be helped.

Fundamentally, more clarification is needed on the following points:

- a. Whether the R7500 is household or individual income?
- b. How one would obtain proof of unemployment?
- c. How one would verify the actual income and expenses of the consumer?
- d. Realisable assets needs to state that furniture that is still under lease/ installment agreements is excluded i.e. needs to be net asset cash conversion?
- e. Whether incidental credit agreements (e.g. cellphone bills that are in arrears) are included?
- f. How one would obtain a set out of all assets and are these only realizable assets?
- g. Why there should be restriction on legal action taken by the CP beforehand?

Additional comments:

- a. "...and includes a disabled person, a minor heading a household, or a woman heading a household." All of these already fall under "natural person", so this further clarification is not needed.
- b. "a debt intervention applicant may apply ONCE to the NCR in the prescribed form, ...if that debt intervention applicant has at 24 November 2017, a total unsecured debt owing to credit providers of no more than R50k." We understand this to be a once off intervention. However, what would happen if it take long for this act to come into power (i.e. say, six months)? Is this date then still relevant? Who would determine eligibility based on the date?
- c. It is mentioned that debt must be R50k or less on 24 November 2017 – Would that mean that any debt taken out after 24 November cannot form part of the debt intervention?
- d. It is mentioned that any credit agreement, where the CP "...had proceeded to take the steps contemplated in section 130 to enforce that agreement." Is excluded. Would this mean a consumer who was actually making payment for the last year would be excluded if bill comes into effect in late 2018?

88B

All of this can already slot into the existing DC process. Fees and subsidy just needs to be agreed upon as well as an automated referral to the NCT.

"must refer debt intervention applicant to a debt counsellor for debt review..." how would the NCR/NCT decide on the particular DC? Same applies to the Tribunal under Section 88C

88C

"a credit provider affected by an order....set down the matter for reconsideration of the order."

It sounds like the CP can't really oppose during the process, but can appeal after the order is granted. This is likely to be a very long process, so who would be responsible for damages (interest on arrears, etc)?

b) If the financial circumstances of the applicant do not improve after the first 12 months, then the Tribunal can declare the debt as extinguished. What incentive/reason would there be for the consumer to improve or inform that they improved their financial position?

c) The consumer might not be allowed to apply for new credit for a period of 36 months. Should it not be a condition of applying for credit, to state if you took part in debt intervention in the past (like you do for debt review or sequestration)?

88D

(b) it is not clear to us how these matters are going to be referred to a DC and who would determine it?

2c – The interpretation of enforcing legal action when a matter is referred to a DC can be dangerous as it seems as if when it gets referred, the matter is concluded and the CP can start legal action

Debt intervention applicant should be a DC applicant and can not be granted developmental and/ or public interest credit

88E

2(a) Rehabilitation can happen settling in full but the applicant is still being charged interest at the prescribed rates from application date. This means that if the NCT suspends the agreements for 1 year then the compound interest will ensure that the applicant never gets out of debt intervention

Same with (b)

3 Why does the applicant need to apply in writing for a rehabilitation order if debt is settled in full as well as proof of income and expenses?

4 Why would the NCR refer the matter the NCT if settled in full? This is not practical?

7(b) who would be the approved financial literacy company and how would the consumer afford the program? Who and how would manage the “certificate from an accredited financial institution”? Would online courses be accepted?

88F

Reference is made in this section as to maximum interest and fees under an agreement. We believe for this sector it must just go down to zero as per point v, even if 5% the compound interest would be significant?

The additional administrative burden being placed on the consumer; NCT and NCR by suspending for 12 months at a time is impractical.

Noone should be able to declare debts under a credit agreement as extinguished on a blanket approach; rather this should be done on a consumer application basis by the DC to the NCT?

The Minister may prescribe a debt intervention measure. This could be a lengthy process and is even published in the Gazette for comments. Who would be responsible for damages while the Minister does his/her investigation? And if Legal action has already started?

Amendment of S86

Agree

Amendment of S90

Agree

Amendment of S106

Why must the credit provider and consumer enter into credit life insurance on the credit agreement over R50k and longer than 6 months?. This, and any other enforced credit life insurance would significantly increase the cost of borrowing for all consumers. Credit life insurance, much like all

other insurance, is a risk product and should only be taken up by the consumer if they want coverage for that risk.

“in the case of a mortgage, not exceeding the full asset value of that property...” Should this not be the value of the mortgage / debt?

Amendment of S129

Agree

Amendment of S130

Agree

Amendment of S137

DC refers applications to NCT

Amendment of S142

(C) Referral from a DC not NCR

Amendment of S152

None

Insertion of S157A

It's going to be hard to determine it as an offence in the target segment market for debt intervention

157B

None

157C

None

157D

Applicable if DC industry is professionalized by allowing companies (as well as individuals) to register as debt counsellors.

Substitution of S161

It seems to us a bit excessive to jail somebody for 10 years in the target segment market for debt intervention. Instead, can the NCT not impose a penalty?

Amendment of S165

a. It is interesting that the word “vary” is proposed to be replaced by the word “change”. We would like to know what the impact on this would be on debt review consent orders granted by the NCT, as currently these can be “varied” under very specific circumstances.

b. “Tribunal may change or rescind an order if the person affected by that order fails to comply with the conditions of the order...”

Again, what does this mean for our Debt Review Consent Orders when there is a non payment. Would this mean the debt counsellor can apply for an NCT debt review consent order to be

“changed or rescinded” if a consumer is not adhering to his or her side of the bargain and not paying?

Amendment of S171

We do not believe the NCT needs to establish a financial literacy program. We believe suitable other programmes exist in industry and should be leveraged. For example, consumers can attend any of these “pre-approved” programmes, get a certificate, and then use that certificate to demonstrate their financial literacy has improved.