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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA****NOTICE 922 OF 2017**

The Portfolio Committee on Trade and Industry hereby publishes the *Draft National Credit Amendment Bill, 2018* and the Memorandum on the Objects of the Bill for public comment.

Members of the public are invited to submit written comment on the Bill by 15 January 2018. Public hearings have been scheduled for 30 January 2018 and 6 and 7 February 2018. Should you require the Memorandum on the Objects of the Bill in any of the official languages, please contact the Committee Secretaries (see details below).

All correspondence should be addressed to Ms J Fubbs, Chairperson: PC on Trade and Industry and marked for the attention of Mr A Hermans, the Committee Secretary (see details below).

Kindly direct all enquiries and written submissions to the Committee Secretaries, Mr A Hermans and Mr T Madima.

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**REPUBLIC OF SOUTH AFRICA**

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**NATIONAL CREDIT AMENDMENT BILL**

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*(As initiated by the Portfolio Committee on Trade and Industry for introduction in the National Assembly (proposed section 76); prior notice of introduction published in Government Gazette*

*No. 41274 of 24 November 2017)*

*(The English text is the official text of the Bill)*

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(Portfolio Committee on Trade and Industry)

[B\_\_ - 2018]

**GENERAL EXPLANATORY NOTE:**

[            ]        Words in bold type in square brackets indicate omissions from existing enactments.

\_\_\_\_\_        Words underlined with a solid line indicate insertions in existing enactments.

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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 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.**

**PREAMBLE**

**WHEREAS** the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), is to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers;

**AND WHEREAS** there are categories of consumers for whom existing debt interventions, contained in legislation such as the Insolvency Act, 1936 (Act No. 24 of 1936), the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and the National Credit Act, 2005 (Act No. 34 of 2005), are inaccessible, either because of the focus these Acts place on benefit to credit providers, or the cost involved with such debt interventions;

**AND WHEREAS** without suitable alternative debt interventions being made available to over-indebted individuals in these categories, it is an unbeatable challenge for them to manage or improve their financial position and become productive members of society;

**AND WHEREAS** to give effect to the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), all consumers must be afforded protection through fair, transparent, sustainable and responsible processes,

**BE IT THEREFORE ENACTED** by the Parliament of the Republic of South Africa, as follows:—

**Amendment of section 3 of Act 34 of 2005**

1. Section 3 of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended by the substitution for paragraphs (g), (h) and (i) of the following paragraphs respectively:

- “(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
- (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.”.

**Amendment of section 5 of Act 34 of 2005**

2. Section 5 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (d) of the following paragraph:

“(dA) Chapter 4, Part E;”.

**Amendment of section 6 of Act 34 of 2005**

3. Section 6 of the principal Act is hereby amended by the substitution for paragraph (a) of the following paragraph:

“(a) Chapter 4 — Parts C<sub>2</sub> [and] D and E;”.

**Amendment of section 15 of Act 34 of 2005**

4. Section 15 of the principal Act is hereby amended by the insertion after paragraph (h) of the following paragraphs:

“(hA) evaluating and referring applications for debt intervention contemplated in sections 88A and 88F;

“(hB) assessing and suspending credit agreements considered to be reckless as contemplated in section 82A;”.

**Amendment of section 27 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008**

5. Section 27 of the principal Act is hereby amended—

(a) by the deletion in paragraph (a) after subparagraph (i) of “or”; and

(b) by the insertion in paragraph (a) after subparagraph (i) of the following subparagraph:

“(iA) referral that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such referral; or”.



**Amendment of section 43 of Act 34 of 2005**

6. Section 43 of the principal Act is hereby amended—
- (a) by the deletion in subsection (1)(a) at the end of subparagraph (iii) of “or”;
  - (b) by the insertion in subsection (1)(a) at the end of subparagraph (iv) of “or”; and
  - (c) by the insertion in subsection (1)(a) after subparagraph (iv) of the following subparagraph:  
“(v) successful debt intervention applications;”.

**Amendment of section 60 of Act 34 of 2005**

7. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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.”.

**Amendment of section 69 of Act 34 of 2005**

8. Section 69 of the principal Act is hereby amended—
- (a) by the insertion after subsection (1) of the following subsection:  
“(1A) The National Credit Regulator must keep a register of applications for debt intervention contemplated in section 88A or as may be prescribed in terms of section 88F, received by the National Credit Regulator and any order made in respect of such applications.”;
  - (b) by the substitution in subsection (2) for the words preceding paragraph (a) of the following words:  
“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)[—];”;

(c) by the substitution for subsection (3) of the following subsection:

“(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.”;

(d) by the substitution in subsection (4) for paragraph (a) of the following paragraph:

“(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”;

(e) by the substitution for subsection (5) of the following subsection:

“(5) A credit bureau must transmit to the national register established in terms of this **[this section]** subsection (1), in the prescribed manner and form, any information reported to it by a credit provider in terms of this section.”; and

(f) by the addition after subsection (6) of the following subsection:

“(7) The Minister, by regulation in accordance with section 171, may prescribe the information to be recorded in the register contemplated in subsection (1A).”.

#### **Amendment of section 70 of Act 34 of 2005**

9. Section 70 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph (a) of the following paragraph:

“(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;” and

(b) by the insertion in subsection (2) after paragraph (a) of the following paragraph:

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

#### **Amendment of section 71A of Act 34 of 2005, as inserted by section 22 of Act 19 of 2014**

10. Section 71A of the principal Act is hereby amended by the insertion after subsection (3) of the following subsection:

“(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.”.

#### **Insertion of section 82A in Act 34 of 2005**

11. The following section is hereby inserted after section 82 of the principal Act:

“**National Credit Regulator to suspend reckless credit agreement**

**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 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).

(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.''

**Substitution of section 85 of Act 34 of 2005**

12. The following section is hereby substituted for section 85 of the principal Act:

**“Court may declare and relieve over-indebtedness**

85. 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—

- (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
- (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).”

**Amendment of section 86 of Act 34 of 2005, as amended by section 26 of Act 19 of 2014**

13. Section 86 of the principal Act is hereby amended by the substitution in subsection (6) for paragraph (b) of the following paragraph:

“(b) **[if the consumer seeks a declaration of reckless credit,]** whether any of the consumer's credit agreements appear to be reckless.”.

**Addition of Part E in Chapter 4 of Act 34 of 2005**

14. The following part is hereby added to Chapter 4 after Part D of the principal Act:

***“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;

(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

(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.

(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.

### **Evaluation of application for debt intervention**

**88B. (1)** On receipt of an application in terms of section 88A, the National Credit Regulator must—

- (a) provide the debt intervention applicant with proof of receipt of the application;
- (b) notify, in the prescribed manner and form—
  - (i) all credit providers that are listed in the application; and
  - (ii) every registered credit bureau; and
- (c) 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—

- (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;
- (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 behaviour, 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.

### **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 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) 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—

(a) may be a percentage of the debt due; and

(b) must apply equally to all the qualifying credit agreements.

(5) When granting an order contemplated in subsection (2)(c), (e) or (f), the Tribunal may set conditions related to—

(a) notification of credit providers and the execution of the order;

(b) subject to section 88D(5), a limitation on the debt intervention applicant's right to apply for credit contemplated in section 60, for such a period, as the Tribunal deems fair and reasonable but not exceeding the maximum periods referred to in subsection (7);

(c) any credit agreement that qualified for the debt intervention;

(d) the attendance of a financial literacy or budgeting skills programme intended to assist the debt intervention applicant to manage his or her financial position; or

(e) any matter that in the view of the Tribunal will aid the debt intervention applicant to manage or improve his or her financial position and become a productive member of society.

(6) Section 84 applies to a suspension contemplated in subsection (3).

(7) The limitation on the debt intervention applicant's right to apply for credit contemplated in subsection (5)(b) may not exceed 36 months and when determining an appropriate period, the following factors must be considered:

(a) The amount in respect of which the debt intervention is sought;

(b) the number of credit agreements that submitted for debt intervention;

(c) the period of qualifying credit agreements;

(d) the debt intervention applicant's credit record; and

(e) the debt intervention applicant's credit behaviour in respect of the qualifying credit agreements.

(8) The National Credit Regulator must notify the debt intervention applicant of any order contemplated in subsection (2), and serve a copy thereof in the prescribed manner and form, on—

(a) all credit providers that are listed in the application; and

(b) every registered credit bureau.

(9) A credit provider affected by an order contemplated in subsection (2) may by notice to the debt intervention applicant and the National Credit Regulator, set down the matter for reconsideration of the order.

### **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.

(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

(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;

(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 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;
- (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 intervention measure that the Minister intends to introduce for consideration and comment.”.

**Amendment of section 89 of Act 34 of 2005, as amended by section 27 of Act 19 of 2014**

15. Section 89 of the principal Act is hereby amended by the substitution in subsection (5) for the words preceding paragraph (a) of the following words:

“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—”.

**Amendment of section 90 of Act 34 of 2005**

16. Section 90 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“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—”.

**Amendment of section 106 of Act 34 of 2005, as amended by section 30 of Act 19 of 2014**

17. Section 106 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:

“(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]** the 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.”;

(b) by the insertion after subsection (1) of the following subsection:

“(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.”;

(c) by the substitution for subsections (2) and (3) of the following subsections:

“(2) Despite **[subsection]** 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 [subsection] 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.”;

- (d) by the substitution in subsection (4) for the words preceding paragraph (a) of the following words:

“If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in [subsection] subsections (1), (1A) or (3)—”;

- (e) by the substitution for subsection (8) of the following subsection:

“(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.

(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.”.

#### **Amendment of section 129 of Act 34 of 2005, as amended by section 32 of Act 19 of 2014**

**18.** Section 129 of the principal Act is hereby amended—

- (a) by the substitution in subsection (4) for paragraphs (b) and (c) of the following paragraphs:

- “(b) the execution of any other court order or order of the Tribunal enforcing that agreement; [or]
- (c) the termination thereof in accordance with section 123[.]; or”; and
- (b) by the addition in subsection (4) after paragraph (c) of the following paragraph:
- “(d) the Tribunal ordered that the debt that underlies a credit agreement is extinguished, or that the credit agreement was reckless or void.”.

**Amendment of section 130 of Act 34 of 2005, as substituted by section 33 of Act 19 of 2014**

19. Section 130 of the principal Act is hereby amended by the substitution in subsection (4) for paragraph (e) of the following paragraph:

- “(e) the credit agreement—
- (i) is either suspended or subject to a debt rearrangement 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,
- the court must dismiss the matter.”.

**Amendment of section 137 of Act 34 of 2005, as amended by section 4 of Act 5 of 2013**

20. Section 137 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

- “(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.”.

**Amendment of section 142 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008**

21. Section 142 of the principal Act is hereby amended—

- (a) by the deletion in subsection (3) at the end of paragraph (f) of “or”;



- (b) by the insertion in subsection (3) after paragraph (f) of the following paragraph:  
“(fA) consideration of a debt intervention application contemplated in section 88B(4)(d), or as may be prescribed in accordance with section 88F; or”;  
and
- (c) by the insertion after subsection (3) of the following subsection:  
“(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.”.

**Amendment of section 152 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008**

22. Section 152 of the principal Act is hereby amended—

- (a) by the deletion in subsection (1) at the end of paragraph (e) of “and”; and
- (b) by the insertion in subsection (1) after paragraph (e) of the following paragraphs:  
“(eA) a credit provider;  
(eB) a consumer; and”.

**Insertion of section 157A in Act 34 of 2005**

23. The following sections are hereby inserted after section 157 of the principal Act:

**“Offences related to debt intervention**

**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.

(2) Any person who deliberately alters his or her financial circumstances in order to qualify for the debt intervention, is guilty of an offence.

**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;
- (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
- (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).

### Offence by company

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.’’.

### **Substitution of section 161 of Act 34 of 2005**

24. The following section is hereby substituted for section 161 of the principal Act:

#### **“Penalties**

161. (1) Any person convicted of an offence in terms of this Act, is liable—

(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]**

(aA) in the case of a contravention contemplated in section 157A, to—

(i) a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment; and

(ii) a permanent prohibition on applying for a debt intervention;

(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

(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.

(2) When determining an appropriate penalty, the following factors must be considered:

(a) The nature, duration, gravity and extent of the contravention;

(b) any loss or damage suffered as a result of the contravention;

(c) the behaviour of the person convicted of an offence in terms of this Act;

- (d) the market circumstances in which the contravention took place;
- (e) the value of the credit agreement that formed the basis for the commission of the offence;
- (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
- (g) whether the person convicted of an offence in terms of this Act has previously been found in contravention of this Act.

(3) For purposes of determining the appropriate penalty contemplated in subsection (1)(aB), annual turnover must be calculated in accordance with section 151(4).

(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.''

#### **Amendment of section 164 of Act 34 of 2005**

**25.** Section 164 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(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.”.

#### **Amendment of section 165 of Act 34 of 2005**

**26.** Section 165 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph (a) of the following words:

“(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—”; and

(b) by the addition after paragraph (c) of the following subsection:

“(2) The Tribunal may change or rescind an order—

(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

(b) if the person affected by that order fails to comply with the conditions of the order or fails to comply with this Act.”.

#### **Amendment of section 171 of Act 34 of 2005**

27. Section 171 of the principal Act is hereby amended by the insertion in subsection (1) after paragraph (b) of the following paragraph:

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

#### **Substitution of the long title of Act 34 of 2005**

28. The following long title is hereby substituted for the long title of the principal 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.”.**

**Short title and commencement**

**29.** This Act is called the National Credit Amendment Act, 2018, and comes into operation on a date determined by the President by proclamation in the *Gazette*.

## **MEMORANDUM ON THE OBJECTS OF THE NATIONAL CREDIT AMENDMENT BILL, 2018**

### **1. INTRODUCTION**

At the end of March 2017, 24.68 million consumers were credit-active in South Africa. Of these credit-active consumers, 14.99 million consumers were in good standing while 9.69 million had impaired records (an impaired record refers to a consumer account that are classified as three or more payments or months in arrears, or which has an “adverse listing”, or that reflects a judgment or an administration order). Consumers with impaired records account for approximately 39.3 per cent of the credit-active consumers and may be considered over-indebted.

A study commissioned by the National Credit Regulator on the “Feasibility of a Debt Forgiveness Programme in South Africa” confirmed that there is a need for the National Credit Act to make provision for the introduction of alternative debt intervention measures to alleviate household over-indebtedness.

Existing mechanisms for debt intervention exclude a group of vulnerable consumers. The Insolvency Act, 1936 (Act No. 24 of 1936), does not assist a debtor where there is no benefit to creditors. The National Credit Act, 2005 (Act No. 34 of 2005) (“the Act”), provides for a debt review measure to alleviate household debt. Similarly, the Magistrates’ Courts Act, 1944 (Act No. 32 of 1944), provides for debt administration where an administrator assists to handle the debtor’s finances and pay off his/her debt. However, due to the costs involved in these procedures, this vulnerable group is still excluded. Debt review is simply not cost-effective for Debt Counsellors when considering applications of consumers earning less than R7500 per month, while debt administration will cost the debtor up to 12.5% of the value of their debt repayments in administration costs.

Without suitable, alternative debt intervention measures available to over-indebted individuals in especially in lower income groups who are unable to afford these other measures, escaping the debt trap is an unbeatable challenge for them to improve their financial position and become productive members of society.

Currently, the Act does not adequately provide for prosecution of unscrupulous lenders. Thus, prohibited conduct has been occurring with little to no consequences. Over-indebtedness could be curbed if there was stricter enforcement of the provisions in the Act on prohibited conduct and available credit life insurance facilities were used effectively where there are unforeseen changes in personal financial circumstances.

### **2. OBJECTS OF THE BILL**

The Bill aims to provide for capped debt intervention to promote a change in the borrowing and spending habits of an over-indebted society. The Bill will provide relief to over-indebted South Africans who have no other effective or efficient options to extract themselves from over-indebtedness. The Bill provides for mandatory credit life insurance



on all credit agreements for longer than six months but no more than R50 000 in value to prevent lower income groups from falling into over-indebtedness due to changes in their financial circumstances. The Bill also aims to further limit the wide-spread abuse of consumers by unscrupulous lenders and to allow for simpler and more rigorous enforcement of the Act by, amongst others, providing for criminal prosecution of persons who contravene the Act.

### **3. CONTENTS OF THE BILL**

- 3.1 Clause 1 amends section 3 of the Act to provide for debt intervention as one of the tools to promote and advance the social and economic welfare of South Africans.
- 3.2 Clause 2 amends section 5 of the Act to make the debt intervention provided for in the Bill applicable to incidental credit agreements.
- 3.3 Clause 3 amends section 6 of the Act to exclude the debt intervention provided for in the Bill from applying to juristic persons.
- 3.4 Clause 4 amends section 15 of the Act to add to the functions of the National Credit Regulator in respect of applications for debt intervention and suspending credit agreements considered to be reckless.
- 3.5 Clause 5 amends section 27 of the Act to add to the functions of the Tribunal in respect of referrals to it in terms of this Act.
- 3.6 Clause 6 amends section 43 of the Act to add the receipt of reports on debt interventions to the business of credit bureaux.
- 3.7 Clause 7 amends section 60 of the Act to correctly reflect the right to apply for credit as being subject to the Act.
- 3.8 Clause 8 amends section 69 of the Act to require the National Credit Regulator to keep a register of applications for debt intervention and to provide that the Minister may prescribe the information to be recorded therein.
- 3.9 Clause 9 amends section 70 of the Act requiring credit bureaux to accept information related to successful debt intervention applications from the National Credit Regulator at no charge.
- 3.10 Clause 10 amends section 71A of the Act to provide for the period within which credit bureaux must remove a listing related to successful debt intervention applications.
- 3.11 Clause 11 inserts section 82A into the Act, which section requires credit providers and debt counsellors to report suspected reckless credit, failing which the Tribunal may impose an administrative fine. The section further empowers the National Credit Regulator to suspend the suspected reckless credit agreement, pending a declaration by the Tribunal.
- 3.12 Clause 12 amends section 85 of the Act to empower a court to refer a matter before it, where the consumer may qualify for debt intervention, directly to the National Credit Regulator for consideration of debt intervention.

- 3.13 Clause 13 amends section 86 of the Act to require a debt counsellor to always consider credit agreements for reckless lending, and not just at the request of the consumer.
- 3.14 Clause 14 inserts Part E into Chapter 4 of the Act. This part provides for criteria for qualifying for debt intervention, the debt intervention application, the process to evaluate debt intervention applications and for the possible orders that the Tribunal may make when considering an application for debt intervention. This part further provides for the effect of applying for debt intervention and the effect of a successful application for debt intervention. Provision is also made for rehabilitation from these effects. This part lastly provides for the Minister to prescribe other debt interventions under certain circumstances, specifying the process that the Minister follow when doing so.
- 3.15 Clause 15 amends section 89 of the Act to empower the Tribunal to declare an unlawful credit agreement void.
- 3.16 Clause 16 amends section 90 of the Act to empower the Tribunal to make an order related to unlawful provisions in a credit agreement.
- 3.17 Clause 17 amends section 106 of the Act to provide for mandatory credit life insurance in respect of certain credit agreements. The targeted credit agreements are those that consumers who earn less than R7500 per month could access. It is further provided that the cost of this mandatory credit life insurance must be determined by the Minister as the purpose is to benefit the target group of consumers and not to create a further burden. It is envisaged that mandatory credit life insurance will enable consumers to not be over-indebted in the event of retrenchment, and so exclude these consumers from any group in need of a debt intervention.
- 3.18 Clause 18 amends section 129 of the Act to provide that a credit provider may also not re-instate or revive a credit agreement where an order of the Tribunal was executed in respect of that credit agreement, or where the Tribunal ordered that the debt that underlies a credit agreement is extinguished, or that the credit agreement was reckless or void.
- 3.19 Clause 19 amends section 130 of the Act to provide that a court must dismiss a matter before it where the credit agreement was declared reckless or void by the Tribunal, or the Tribunal ordered that the debt underlying that credit agreement was extinguished.
- 3.20 Clause 20 amends section 137 of the Act to provide for the referral of applications for the debt intervention to the Tribunal.
- 3.21 Clause 21 amends section 142 of the Act to provide for the hearing of an application for debt intervention by a single member of the Tribunal and to provide that such member may consider an application for debt intervention on the documents before it without further evidence having to be led. This is to ensure that the applications are considered efficiently.
- 3.22 Clause 22 amends section 152 of the Act to make it clear that orders of the Tribunal are binding on credit providers and consumers as well.
- 3.23 Clause 23 inserts sections 157A, 157B, 157C and 157D into the Act. Section 157A provide for offences where a person intentionally submits false information or

intentionally misrepresents information when applying for debt intervention, or where a person deliberately alters his or her financial circumstances in order to qualify for debt intervention. Section 157B provide for offences related to acts that are currently prohibited by the Act. Section 157C provides for offences where, despite registration being required by the Act, a person still operates as credit provider, credit bureau, debt counsellor, payment distribution agent, or alternative dispute resolution agent. Section 157D provides for the situation where an offence is committed by a company.

- 3.24 Clause 24 amends section 161 of the Act to provide for penalties for the offences created in clause 23. Due to seriousness of the offences, the maximum period of imprisonment is set at 10 years and in respect of the offences set out section 157A, the debt intervention applicant is also permanently barred from applying for any debt intervention. In respect of offences committed by a company, the example of administrative fines set out in section 151 is followed so that the maximum fine is set at 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater.
- 3.25 Clause 25 amends section 164 of the Act to extend the provisions of the Act related to civil actions and jurisdiction to orders that the Tribunal may make in respect of unlawful provisions or unlawful credit agreements.
- 3.26 Clause 26 amends section 165 of the Act to provide that the Tribunal may change or rescind its order under certain circumstances.
- 3.27 Clause 27 amends section 171 of the Act to require the Minister to make regulations establishing a financial literacy and budgeting skills programme to assist consumers to manage their financial position.
- 3.28 Clause 28 amends the long title of the Act so as to provide for debt intervention.
- 3.29 Clause 29 provides the short title and commencement.

#### **4. FINANCIAL IMPLICATIONS FOR THE STATE**

The National Credit Regulator will require additional capacity to process the applications for debt intervention. It is however foreseen that the applications will have a limited period as the Bill provides for a cut-off date of the debt that qualifies. Any increase in capacity is thus temporary.

#### **5. DEPARTMENTS, BODIES OR PERSONS CONSULTED**

The following stakeholders were consulted:

- Department of Trade and Industry;
- Department of Justice and Constitutional Development;
- Department of Labour;
- National Treasury;
- South African Reserve Bank;

- South African Revenue Service;
- Financial Houses;
- Retailers who lend money;
- Debt Counsellors;
- National Credit Regulator; and
- National Consumer Tribunal.

## **6. PARLIAMENTARY PROCEDURE**

- 6.1 The Committee proposes that the Bill must be dealt with in accordance with the procedure established by section 76 of the Constitution as it affects “Trade” and “Consumer Protection”.
- 6.2 The Committee is of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)(a) of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities





# **WARNING!!!**

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