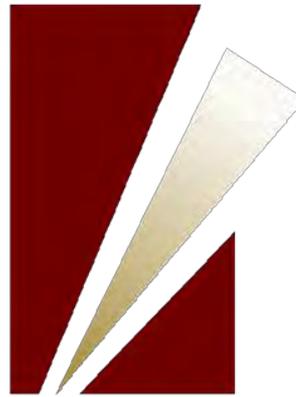


# Briefing to the PC: Trade and Industry on Proposed Debt Relief Measures

Presented by:

**Prof Joseph Maseko**  
Executive Chairperson  
**Ms Marelize Bosch,**  
COO



national consumer tribunal

Date: **10 October 2017**



# INTRODUCTION

1. The purpose of these submissions is to address the proposed debt relief measures as presented in the draft Credit Amendment Bill and specific aspects thereof.
2. The Tribunal's submissions will only relate to specific aspects relating to the NCT and other general observations made.



# GENERAL COMMENTARY – PROPOSED AMENDMENT OF SECTION 3

1. For the current DRA orders of the NCT in relation to consumers who are experiencing difficulty or are likely to experience difficulty to service all obligations under credit agreements in a timely manner - consent between all parties are a prerequisite. See section 86(7)(b) read with section 86(8)(a).
2. The Tribunal confirms these matters as orders of the Tribunal in terms of Section 138 to provide the weight of Section 160 (criminal sanctions) to these matters.
3. In relation to other orders of the Tribunal consent is not necessary and in fact as indicated in the commentary of the proposed amendment to section 3 various debt relief measures in the Act are not consensual.



# GENERAL COMMENTARY – PROPOSED AMENDMENT OF SECTION 6

1. The intention is indicated that the amendment “*makes debt relief measures not available to credit agreements where the consumer is a juristic person*”
2. Unless defined elsewhere, it may be necessary to similarly relook the definition of a “consumer” in section 1.



# GENERAL COMMENTARY – SECTION 88B

1. In terms of this section it would be required by the NCR to draw the attention of the Tribunal to certain findings made in its role in processing debt relief applications.
1. Process for this “alert” to be considered. Possibility of a compliance notice process could be considered prior to referral to NCT.



# GENERAL COMMENTARY – SECTION 88B

3. Some possibilities to be considered:

- ❑ NCR could perform function similar to **family advocate** and **maintenance officers**, whose investigations are treated as *prima facie* evidence that they are fact as they act in the interests of the minor child at that stage. They are not subjected to further proof unless they are vigorously challenged with compelling proof of inaccuracy and lack of authenticity.
- ❑ There would possibly have to be designated Debt Relief Officers, under the NCR, if not completely independent like Debt Counsellors.



# ROLE OF THE NCT – SECTION 88B5(a)

1. In terms of this section, those matters where the NCR reasonably concludes that a consumer does not qualify for once-off debt relief, will come to the Tribunal via the current non-referral process as set out in Section 141.
2. The Tribunal already has the necessary processes etc. in place to deal with these applications.
3. Similar process should be considered for decision to refer to debt counsellor, as the consumer may disagree with the assessment and findings of the NCR.



# ROLE OF THE NCT – SECTION 88B5(c)

1. Tribunal agrees to the proposed amendments to Section 90 and 164 to allow the Tribunal to declare credit agreement unlawful.
2. In terms of this section, the NCR may conclude that a certain credit agreement ... 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.*
3. There may still be a need for application of the *audi alteram partem* rule and for an affected credit provider to make representations and oppose such a finding if they should differ with it.



# ROLE OF THE NCT – SECTION 88B5(c)

4. *Even when the NCR under subsection (5)(d) concludes that the consumer qualifies for once-off debt relief, and makes a recommendation to the Tribunal for once-off debt relief to be granted to the consumer; the **audi rule** should still be built in.*
5. A process emulating but not imitating that of the **Consumer Protectors** in **Consumer Courts** could play this role. In this role, the designated representatives of the NCR discharging the function would be then main **champions** of the consumer at state expense; with no filing fees etc.



# ROLE OF THE NCT – SECTION 88C

1. The Tribunal has the necessary internal processes to deal with these applications (similar to processes currently being utilised for DRA applications)
2. We are in agreement that a single member should consider these matters and utilising a motion procedure as proposed.
3. An amendment to the Tribunal's rules would however be necessary, to include the necessary forms and procedures for these matters
4. Table 2 (setting out the filing requirements for each application which can be made to the Tribunal) will also have to be amended.



# ROLE OF THE NCT – SECTION 88C

5. Without the need to cover them individually, all the orders proposed under the proposed section 88C(4) are also supported.
- But the main caveat should be that the Tribunal member should at no stage play the role of investigating or researching the solutions, but rather consider the submissions and presentations and prayers of the parties. She should then chose the correct outcome informed by the evidence and not personal preferences and wishes.
  - The process must still remain adversarial, as the consumer will be adequately represented and spoken for by the NCR official of whatever the title will be – who will be acting as an officer of the court/Tribunal.



# **CHANGE IN CIRCUMSTANCE – SECTION 88D6(c) vis-à-vis SECTION 165**

1. The Tribunal will be able to amend an order based on a change in circumstance – this proposed amendment is further supported.
2. It is proposed that a similar amendment be included to Section 165, to allow changes in circumstances to also be considered in relation to other DRA matters where the Tribunal has previously made an order.
3. Similarly, it is proposed that the contents of Section 88D7 be included in Section 165 for other Tribunal DRA orders to allow for rescission or variation in instances of dishonesty or failure to comply with the conditions of the order.



# GENERAL COMMENTARY / OBSERVATIONS

1. It is proposed that parties should similarly be able to appeal the debt relief decisions of a single member to a full panel of the Tribunal as is the case with other types of applications handled by single members
2. It may appear that debt relief seems to only favour the consumer. How does it benefit the credit provider as a practice? For instance, can a credit provider who has to pardon the debt, based on this amendment, be in anyway compensated? Tax deductions? Or should they be expected to take out insurance policies to mitigate such losses?
  - ❑ It is possible that micro lenders and other small SME providers may themselves run their business to the ground assisted by the debt relief. So the interests of justice may still require that the law makers consider that question more broadly.



# OUR CONTACT DETAILS

**Office Hours:**

Monday to Friday, excluding public holidays, from 09:00 to 16:00.

**Postal Address:**

Private Bag X 110  
Centurion  
0046

**Physical Address:**

The National Consumer Tribunal  
Ground Floor, Building B,  
272 West Avenue  
Lakefield Office Park  
Centurion, Pretoria

**Telephone:** (012) 683 8140.

**Facsimile:** (012) 663 5693.

**E-mail:** [Registry@thenct.org.za](mailto:Registry@thenct.org.za)



**THANK YOU**

**Q&A**