



**the dti**

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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**Consumer And Corporate Regulation Division**

**PRESENTATION TO PORTFOLIO COMMITTEE ON THE NATIONAL  
CREDIT AMENDMENT BILL, 2017 DEALING WITH DEBT RELIEF**

**10 OCTOBER 2017**

**PRESENTER**

## **MacDonald Netshitenzhe**

Acting Deputy Director General (DDG): Consumer and Corporate Regulations Division

## **Siphamandla Kumkani**

Acting Chief Director: Policy and Legislation

## **Khutso Mogotsi**

Credit Law and Policy Unit

## PURPOSE

- To provide a response to Portfolio Committee on Trade and Industry (the Committee) on the Draft Framework for the **National Credit Amendment Bill, 2017 (Committee Bill)** dealing with debt relief.
- The response focuses on: The **type of debt which the bill has identified**; The **measures, criteria, orders to be considered** and The **impact of the measures**; the application of the “in duplum rule”

## TYPE OF DEBT

- **the dti** previously proposed that the Committee consider providing debt relief to **retrenched consumers with no income and insufficient or no credit life insurance** to pay off their debts. To some extent this has been incorporated into the draft framework and the latter is supported by **the dti**.
- **the dti** also proposed tangible **debt relief for victims of unlawful deductions to child support grants, reckless credit lending victims, victims of unlawful Emolument Attachment Orders (EAOs)**, victims whom were unlawfully sold Credit Life Insurance products and victims of deductions related to prescribed debts, which cannot lawfully be revived post the prescription period. The Committee should reconsider these victims for “Once-off” debt relief as proposed in the draft framework.

## TYPE OF DEBT

- **the dti** considers payments made on unlawfully attained deductions and recklessly granted loans to be unduly enriching credit providers. No justifiable legal cause exists for the persisting deductions and same cannot be viewed as the “Property” of the credit providers, due to the unlawfulness of the founding transactions.

## MEASURES, CRITERIA, ORDERS

- **the dti** previously made submissions regarding the technicalities within the processes of the NCT which result in unsustainable backlogs and delayed debt relief for the consumer and made proposals to the Committee on the enhancement of the powers of the NCR to promote effective enforcement of the NCA 34 of 2005.
- **the dti** anticipates the same barriers to effective debt relief where applications are referred to the NCT whilst the processes of the NCT are not reviewed and improved in order to ensure speedy redress and debt relief to consumers.
- The proposed debt relief framework cannot be considered within the current NCT regime, where satisfaction of legal technicalities outweighs the merits or the need for consumer redress.
- The Committee should consider the approach of the CCMA / Companies Tribunal where the merits of a case take precedence over satisfaction of legal technicalities.

## MEASURES, CRITERIA, ORDERS

- **the dti** is of the view that the choice of orders as proposed debt relief measures already exist within the credit industry and amount to “restructuring” as contemplated in the NCA 34 of 2005. However this is at the behest of the credit provider.
- **the dti** proposes that the Committee should reconsider tangible debt relief through outright partial or total extinguishing of credit obligations and prohibiting further deductions or instalments, coupled with refunds to affected consumers or victims where unlawful deductions and undue enrichment is identified.

## IN DUPLUM

- Although the interpretation of the *in duplum* rule is provided for in the NCA 34 of 2005, as encompassing the elements of the cost of credit in terms of section 103(5), enforcement issues still remain where ordinary consumers are often taken advantage of and required to pay way beyond what is legally acceptable.
- Proper application of section 103(5) and including the amount contemplated in section 101(1) (b) to (g) for the purpose of determining *in duplum*, may in itself provide great debt relief for defaulting consumers.
- **the dti** is of the view that NCA should provide for debt relief measures where unscrupulous credit providers and debt collectors are found to be deliberately circumventing the application of section 103(5) read with section 101(1) (b) to (g) and requiring consumers to pay well above the legally acceptable charges.
- Reference should be made to the “Debt Collectors Amendment Act” (still a bill), which regulates debt collections, including Attorneys functioning as debt collectors.



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THANK YOU