DTI response to submissions on the National Credit Amendment Bill [B__ -2018]

Key:

- Submitters are grouped together around an idea to simplify responding and subsequent actions. The wording of the idea thus reflects a number of submitters' inputs.
- ~~A~~mend" - is recommended wherever the proposal does not change the content of the Bill and can add value

Liberty: We are broadly in agreement with the rationale behind the intended changes

Pre-amble

NT:	Propose including the balancing objective of financial stability, possibly as a secondary or supporting objective.	Amend Preamble (add) as proposed and also include basis for intervention.
NT:	Although the preamble notes challenges with the NCA and original representations by the dti on improvements, it seems that these proposals have been omitted. It would be preferred for these reforms to be included in the bill, to try and deal with root problems identified.	Need clarity.
Justice	With regard to the second paragraph of the Preamble, where it is stated that specific Acts are inaccessible because of the focus on benefit to creditors, section 3 of the NCA states that the purpose of that Act is to promote and advance the social and economic welfare of South Africans and to protect consumers. It is suggested that the references to specific Acts be deleted.	Amend Preamble (delete references).
Z King	The preamble comment that says that consumers with debt are not ~~"~~productive members of society' seems demeaning and derogatory to those in debt (though it is doubted this is the intent). The phrasing might need to be reconsidered.	Amend.
NCRF	The Bill refers to existing legislation that provides relief to consumers who are in financial difficulties, such as the NCA itself, Magistrates' Court Act and Insolvency Act, but does not provide detail as to why current legislation is not sufficient or cannot be used subject to procedural improvements.	In order to go under debt review, consumers need to earn an income, and be in the position to pay for debt counselling costs. Consumers who do not have an income, must have assets and be able to show advantage to creditors in order to qualify for insolvency. In order to apply for administrative

		orders, consumers must earn an income, thus consumers with no income cannot get redress under the Magistrates' Court Act.

New Clause – Section 1: Definitions

DTI **Justice** **NT**	It is proposed that the term ‗debt intervention' inserted into subsection (i) be defined. Section 88C, which provides for the orders a Tribunal may make, gives an indication of what is meant by ~~d~~debt intervention".	Amend s1 (add def.)
IDC	**"debt intervention"** is a legal right under Section 66 and includes: (a) addressing reckless credit agreements and reckless credit conduct by a credit provider; (b) debt re-organisation or debt re-arrangement for consumers not yet over indebted; (c) debt re-organisation or debt re-arrangement for consumers who are over-indebted; and (d) consumers below the threshold amount for low income earners published by the Minister in the Regulations.	Consider.
IDC	**"prohibited conduct"** means an act or omission in contravention of this Act and to include reckless lending practices by credit providers;	The addition of the words ~~a~~nd to include reckless lending" is not necessary as reckless lending is an act or an omission in contravention of the Act.
IDC	**"Total Outstanding Balance"** means total cost of credit outstanding on an agreement at any given time to include the principle debt and all costs defined under Section 101 until the end of the agreed contractual period.	Consider – amend.

Clause 1 – Section 3(g), (h) and (i): Purpose of the Act

Supported by dti

AGBIZ **BASA** **CPF** **DCASA** **Finbond** **NT** **K Louw** **NCRF**	Section 3 is carefully worded to achieve a delicate balance between the interests of creditors and debtors. Care must be taken not to upset this balance, especially as the phrase ~~w~~here the consumer's financial situation so allows, or may so allow in the foreseeable future" may have more than one interpretation. Resolution of disputes should be consensual. These proposed amendments are done without a review of the credit policy that underpins the NCA These amendments should be deleted.	See DCASA proposal amend.

DTI	Must take circumstances into account ito which consumers will qualify for debt intervention – both consumers who are over-indebted and/or in financial distress. Financial distress to be defined as described in s86(7)(b)	Amend S3 – delete current amendments and rather add a new paragraph.
Z King	Section 3(1)(g) mentions the ‗principle of satisfaction by the consumer of all financial obligations' The phase might be better adjusted to match other portions of the Act where it focuses not on just plain satisfaction of the debt but ‗eventual' satisfaction of all financial obligations. (eg. See Section 3(1)(i)) The strange and inconsistent lack of the word ‗eventual' in this paragraph has caused some credit providers and courts to try force unreasonable short repayment terms on consumers who could more realistically repay debts over longer time periods.	Amend s3(1)(g).
DCASA	It is proposed that the a new section be created to cater for Debt intervention along the following lines: (gA) Providing for debt intervention for qualifying Consumers where the Consumer's financial situation so allows, or may so allow in the foreseeable future;	Amend – delete current amendments and add (gA) – consider IDC's inputs as well.
IDC	(c) promoting responsibility in the credit market by- (i) encouraging responsible borrowing, avoidance of over-indebtedness and fulfilment of financial obligations by consumers; and (ii) discouraging reckless credit ~~granting~~ lending practices by credit providers and contractual default by consumers; … (i) providing for a consistent and harmonised system of debt intervention to include re-organising of all debt obligations under all credit agreements contemplated, reckless credit prevention, enforcement and judgment, which places priority on the eventual satisfaction of all responsible consumer obligations under credit agreements.	Amend – consider DCASA's (gA).
NCRF	**Section 3(g), (h) and (i):** What is ~~f~~oreseeable future"?	Amend – delete current amendments and add (gA) as per DCASA and IDC's inputs.

Clause 2 – Section 5: Making the debt intervention measure applicable to incidental agreements

BASA	Recommend that these be excluded from the measure, alternatively the NCT should order that the goods bought under the incidental agreement should be returned	PC to consider excluding these. The impact would be on suppliers / service providers who never intended to provide the consumer with credit – and the consumer has the benefit of goods / services delivered.
NCRF	Debt intervention should not apply to incidental credit agreements. The NCA has limited application to	PC to consider excluding these.

Truworths	incidental credit agreements and together with developmental credit agreements (as in the case of the affordability regulations) should be excluded from the ambit of debt intervention. Given the nature of an incidental credit agreement, debt intervention constitutes an unnecessary burden on the credit provider when consideration is given to the lack of any concomitant substantial benefit to the receiver of incidental credit. The definition of ~~d~~debt intervention applicant" in section 88A(1) of the Bill makes it clear that what was intended was for the proposed Part E to apply to consumers under a credit agreement (i.e. one referred to in section 8 of the Act). A recipient of incidental credit does not fall naturally into the proposed Part E. The objects of the Bill relate to the promotion of a change in the borrowing and spending habits of an over-indebted society with reference in the Memorandum to ~~c~~credit-active consumers" in a ~~d~~debt trap". None of these considerations apply to incidental credit receivers, alternatively, to the extent that they do apply, their application is substantially limited and their inclusion in the proposed debt intervention provisions does not meet the object of the Bill and does not provide such consumers with any benefit that warrants the corresponding burden imposed on providers of incidental credit. Further, reckless credit does not apply to incidental credit and yet part of the debt intervention evaluation is iro reckless credit.	The impact would be on suppliers / service providers who never intended to provide the consumer with credit – and the consumer has the benefit of goods / services delivered.
Truworths	We respectfully submit that the impact of the Bill will be unintentionally broad and will serve to inadvertently and negatively impact many different industries in South Africa beyond those (like the retail and finance sectors), which the Bill is likely intended to regulate. More examples of such unintended impact is the effect the Bill is likely to have on the healthcare sector, in particular doctors' fees and hospital bills, as well as on the mobile telecommunications service providers and municipalities and utility service providers, all of whom extend incidental credit	PC to consider excluding these. The impact would be on suppliers / service providers who never intended to provide the consumer with credit – and the consumer has the benefit of goods / services delivered.

Clause 3 – Section 6: Making the debt intervention measure not available to consumers who are juristic persons

BASA	We recommend that: - trusts and stokvels should be excluded from applying for debt intervention (for the purposes of debt intervention, trusts should always be seen as a juristic person regardless of the number of trustees); - the definition of ~~j~~juristic person" should be extended to include all trusts; and - sole proprietors should be excluded from application for debt intervention, however should sole proprietors be included and afforded an opportunity to apply for debt intervention, bespoke criteria should be designed (for example specific qualifying criteria which caters for the calculation of business income and personal income capped at R 7 500 gross income per month).	Amend – intention was not to incentivise businesses.

New Clause – Section 7: Thresholds

IDC	(1) On the effective date, and at intervals of not more than five years, the Minister, by notice in the Gazette, must determine- (c) The amount in terms of income of low income earners threshold to be subsidized for debt intervention by debt counsellors for services rendered. (d) The threshold amount under which a consumer falls within the ambit of debt intervention for low income earners in terms of section 86 of this Act.	PC to consider if a fund is provided for and if the debt intervention's period is extended.

Clause 4 – Section 15: Adding to the enforcement functions of the NCR

Justice:	Section 15 deals with the enforcement functions of the NCR. Paragraphs (hA) and (hB) are inserted as further functions of the NCR.	Amend heading of section.
Justice:	Paragraph (hA) should refer to applications for debt intervention and applications for rehabilitation (section 88E).	Amend (Add).
Justice:	Section 88F deals with debt intervention measures by the Minister of Trade and Industry. It is also suggested that it is specified that referrals are made to the Tribunal: *(h*A*)* evaluating and referring applications for debt intervention *and rehabilitation* contemplated in sections 88A and *88E to the Tribunal*;"	Amend (Add + clarify inclusion of 88F).
AMC **NCRF**	How will the NCR develop the necessary capacity and know-how in a short period so as to not hold up the entire credit process?	NCR to assist iro processes and capacity.
BASA **Finbond** **NCRF**	The power to suspend reckless agreement is unconstitutional and not fair administrative justice: NCR does not have to consider the credit provider's side and is adjudicator and enforcer (hB) to be removed	Reckless agreement is unlawful and is not unconstitutional. All parties are given a right to be heard.
DCASA	(hA) The proposed addition of enforcement powers of the NCR will have the unintended consequences in that the NCR will fulfil opposing roles of Regulation and Debt Intervention. Unless such a referral include a detail affordability assessment and proposed repayment proposal the submission of the documents required in the proposed Section 88A and 88F will be of no value. By adding the duties as proposed in (hA) the NCR is required to fulfil an administration function which normally the NCR will monitor and oversee. (hB) Reckless Credit remains problematic and a better solution is required. We support the (hB) but the lack of reckless referral process and lack of compensation to conduct reckless credit assessment will render this process useless.	PC to amend.
NDCA	(hA) should be a debt counsellor	PC to consider.
NDCA	(hB) – Only the NCT should be able to suspend agreements. This should be done by a panel of 3	PC to consider.

Standard B	members and appealable to the High Court	

Clause 5 – Section 27: Adding the receipt of referrals to the functions of the Tribunal

DCASA	(iA) The replacement of application with referral will have an effect on the interpretation of different sections of the NCA which currently refers to application. For instance Section 110, 113, 114, 115 to name but a few.	(iA) does not replace (i) – both application and referral are provided for.
IDC	(a) adjudicate in relation to any- (i) application and 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 an application; ~~or~~ (ii) allegations of prohibited conduct by determining whether prohibited conduct has occurred and, if so, by imposing a remedy provided for in this Act; (iii) and declare any credit agreement to be reckless and make any order regarding prohibited conduct and relief to the consumer in terms of section 83.	Amend.
SAIPA	(iA) should rather be (iii)	Amend.

Clause 6 – Section 43: Adding the keeping of information related to successful debt interventions as one of the services of a credit bureaux

BASA **CGCSA** **Summit** **NCRF** **Truworths**	All information about the status of the debt intervention: the application itself, referral to NCT, order of NCT, subsequent orders of NCT, rehabilitation, should all be reported to a credit bureaux (v) ~~successful debt intervention~~ applications for debt intervention and/or the status of debt intervention applications;".	Amend – certain limitations apply from the application stage: thus need information sharing.
DCASA	Successful debt intervention applications has not been defined. Section 43(V) may also be in conflict with Section 70(1)(a) where the following addition is proposed: —a debt intervention granted"	Amend – see above.
Summit	It is suggested that debt review applications also form part of the definition of consumer credit information'.	Amend.
NDCA **SACCRA**	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. The method for the reporting of the various pieces of information needs to be considered and certainly where the Payment Profile Data (PPD) is affected, changes to the Data Transmission Hub (DTH) which is the mechanism through which the PPD currently flows at a rate of over 60 million records per month would need to be reviewed and processes, management thereof and even possibly the functioning of the DTH may require amendment. The timely transmission of data for either updating or removal is critical to the success of the Bill's stated purpose and prescripts.	The DebtHelp system will be enhanced to accommodate and facilitate the data transmissions for debt intervention applications.

CBA SACRRA	The National Credit Regulator should not notify ALL registered credit bureau, but rather only the approved credit bureaux who are able to list and remove the information pertaining to debt relief on their credit bureaux. The effect of this listing will be discussed and agreed at the proposed industry forum. There are 20 registered credit bureaus in South Africa, but only 6 of the registered credit bureaus are currently approved by the NCR to host the Payment Profile Data to which all credit agreements pertain and all approved bureaus are expected to hold the same Payment Profile Data.	Check and amend where necessary.
TCRS	How will it work in practice where a debt of a consumer (and Debt intervention Applicant) is no longer recorded on a credit bureau because the time limits for maintaining records have lapsed	Question to CBA.

New clause – Section 54

IDC	Add a function to the NCR: ~~r~~efer any offence in terms of this section to the National Prosecuting Authority and/ or any prohibited conduct to the Tribunal."	Consider – but is this the correct placing?

Clause 7- Section 60: Making it clear that the right to apply for credit is subject to the NCA

NT:	Propose that the amendment may be unnecessary	Noted and correct in law. Amendment is for clarity – PC to decide.

Clause 8 – Section 69: National registers – requiring the NCR to keep a register of applications for debt intervention

NDCA	Amend heading to provide for both registers	Amend heading.
NT:	(1A): Notwithstanding (7), It would be useful to clarify what this register will be used for, and by whom? Will it be made public?	The register will be used to monitor and account for all processed debt intervention applications.
CBA: **NT:**	(1A): While supporting the need for such a register in principle, it is not clear about the cost of such a register and the resources/capacity required of the NCR to run it. Currently reporting is done through the credit bureaux.	NCR, together with the CBA and other relevant industry bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
DCASA	Suggest an implementation date be added + information required to be defined. Process must be electronic with necessary interfaces	NCR, together with the CBA and other relevant industry

		bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
BASA	Add: The register must be created within 30 business days of the promulgation of this section. The National Credit Regulator must update the register and supply the information contained in the register to all registered credit bureaux in the prescribed manner and form within 48 hours of receipt of each application for debt intervention. The National Credit Regulator must update the register with the status of the debt intervention applications and inform all registered credit bureaux in the prescribed manner and form of the change in the status of the debt intervention application within 48 hours of the status change occurring. Any interested or impacted party may dispute the information contained in the register as per a process the Minister must prescribe. An accredited auditing firm must audit the register on an annual basis and this report must be made available to the public. The National Credit Regulator must address any findings in the report."; Section 69(7) be amended to read: ~~"~~The Minister, by regulation in accordance with section 171, ~~may~~ must prescribe the information to be recorded in the register contemplated in subsection (1A)."; (BASA provides information to be prescribed)	NCR, together with the CBA and other relevant industry bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
CBA	S69 is inoperative – cannot add the debt intervention measure register here	The section is operational – it just allows discretion in whether to develop the national register of credit agreements.
CBA	Recommend that this be a record, rather than a register as a register can be made open to the public.	Amend.
CBA	The NCR should issue guidelines on what should be kept in the register and not the Minister	PC to consider.
CBA	We recommend that a process be included in the proposed amendments to allow for all orders to be sent by the Tribunal to the National Credit Regulator within a specified time-frame and then uploaded by the National Credit Regulator to the Debt Forgiveness System which the credit bureaux will have access to, so that credit bureaux can comply with the proposed amendments to S71A. Credit Providers should also be obliged to update the credit bureaux with this information	NCR, together with the CBA and other relevant industry bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
IDC	Information in register to include the total outstanding contractual balance at the time of application for debt intervention.	Amend.

Summit	The NCR must keep a record of debt intervention applications, as they should of debt review applications. If the national register of credit agreements will also serve as the register for debt intervention applications, it is submitted that debt review applications should also be noted on the register.	PC to consider.
NCRF	This register must be kept up-to-date at all times and must be available with reliable access for the public to inspect. A process should be allowed for any interested party to dispute information in the register.	PC to consider.
StandardB	We submit that this register should be available to credit providers to use in their credit risk assessments for credit granting purposes.	PC to consider.
WC	Correct: ~~5~~() …_(5) A credit bureau must transmit to the national register established in terms of this **[~~this~~ section]** subsection (1),…"	Amend.

Clause 9 – section 70: Requiring credit bureaux to keep info on successful debt interventions and to accept reports free of charge from the NCR

BASA **CGCSA** **CBA** **DCASA** **Truworths**	All information about the status of the debt intervention: application, referral to NCT, order of NCT, subsequent orders of NCT, rehabilitation, should all be reported to a credit bureaux + timeframes for reporting should be prescribed. This must be on an automated process …intervention by a consumer and the status of such applications ~~a successful debt intervention application~~". Or – change ~~g~~anted" to ~~a~~pplication"	NCR, together with the CBA and other relevant industry bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
BASA	The consumer should have the necessary recourse to compel the NCR and the NCT to update the Credit Bureaux	Amend.
CBA	Only a credit provider can update detail onto a credit bureau. The bureau can upload an NCT order as one single concept, but the detail must be uploaded by a credit provider. The NCT and NCR will need systems to upload information to a credit bureau	NCR, together with the CBA and other relevant industry bodies that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
CBA	We recommend a further amendment to the NCA to provide for a dispute process for debt intervention information held on the records of the credit bureau. A credit bureau has no means of adjudicating this type of dispute where the NCR will be the final arbiter in respect of correct information held on a consumer, and we thus recommend that the NCR put in place a specific dispute process to deal with these types of disputes. The outcome of any dispute should then be notified to the credit bureaux so that the information on the records of the credit bureaux can be updated accordingly.	Amend.
IDC	Credit bureaux also to accept without charge information on debt intervention applications from debt counsellors	Consider – if the process goes via debt counsellors.
Z King	The consumer should also be kept up to date with progress	Amend.

NDCA	*(b)* The addition is fine but we believe that it should be a Debt Counsellor who should file the information	PC to consider.

Clause 10 – section 71A: Requiring credit bureaux to remove information related to debt interventions

DCASA	Mentions section 71 – CLSO: check if this should be added to s71 or 71A	Check.
CGCSA	No indication is given as to whether it is the responsibility of the NCR or the NCT to furnish the information on time to the relevant Credit Bureaux in order for them to act in accordance with this section	The NCR can submit the information through the DebtHelp system.
BASA **Truworths**	Minimum and maximum retention period of the debt intervention indicator on the credit bureaux should be 12 months and 60 months, respectively. This will assist credit providers with conducting responsible affordability assessments and establishing the consumer's debt repayment history under credit agreements. It is important that regulation 17 should be reviewed and aligned with the proposed legislative changes. Truworths: Iro a s88C(4) order, the period should be 5 years before the information is removed as this is a drastic intervention in the consumer's financial position. The 5 year period is consistent with the 5 year period applicable to the information on civil judgements, as well as sequestration, administration and rehabilitation orders, retained by credit bureaux.	PC to consider. DTI to assist. PC to consider – benchmarking is recommended.
BASA	Days should be business days (see section 2(5))	Amend.
CBA	Credit bureaux will need an order in 88C(2); (3) or (4) before the info can be removed. It needs 2 steps – the credit provider must be notified and the credit provider then updates the system.	Amend.
CBA	Iro extinguishing of debts – the effect of this on reporting and on systems of credit providers is that the agreement is dead. If it is extinguished in part, the credit provider has to enter into a new agreement	Amend?
DCASA	The lack of consistent reference to a ~~s~~successful" debt intervention will render reporting problematic. Suggest use of debt intervention granted instead of successful debt intervention. Need to submit info for review 2 months before expiry of 12 months period	Amend
NCRF	Only upon the expiry of 5 years (and not 12 months), must the credit bureaux remove the debt intervention listing. The insertion of a longer period is justified in light of the drastic effect that an order of extinguishment by the NCT under clause 88C(4) will have on a credit provider, and because such extinguishment will only be ordered if the debt intervention applicant's household is in a dire financial position and has been for some time, thus warranting the retention of this important information at the credit bureaux for an extended period so that the risk of possible future over-indebtedness or the granting of reckless credit is minimised. The 5 year period is consistent with the 5 year period applicable to the information on civil judgments, as well as sequestration, administration and rehabilitation orders, retained by credit bureaux.	PC to consider.
NCRF	Add:	Amend.

	(c) 7 days after the NCR or the NCT concluded that the application for debt intervention has been rejected or was unsuccessful as contemplated in section 88C(2)(a) or (b), whichever is the later date.[our amendments]	
NCRF	Need to be clear on WHAT information are to be removed from the Credit Bureax	NCR, together with the CBA and other relevant industry bodies such as SACCRA that are involved in data and credit bureau information, will form a technical committee to discuss the flow of data in respect of debt intervention.
NDCA SACCRA	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. The method for the reporting of the various pieces of information needs to be considered and certainly where the Payment Profile Data (PPD) is affected, changes to the Data Transmission Hub (DTH) which is the mechanism through which the PPD currently flows at a rate of over 60 million records per month would need to be reviewed and processes, management thereof and even possibly the functioning of the DTH may require amendment. The timely transmission of data for either updating or removal is critical to the success of the Bill's stated purpose and prescripts.	The NCR intends enhancing the DebtHelp system for purposes of the debt intervention processes.
SAIPA	Should the details of the consumer not be retained where the consumer defaulted on the debt intervention order?	PC to consider.

New Clause – section 81

Summit	Section 81(4) of the Act serves as a reminder to consumer to answer any request for information fully and truthfully, it provides no protection for consumers. Section 81(4) does, however, provide a credit provider with a remedy, should an agreement be challenged on recklessness. Although it is important for consumers to be honest when completing a credit application, this section serves as an all too easy scapegoat for unscrupulous lenders. It comes as no surprise that most consumers under states their living expenses when applying for a loan. Sometimes consumers are encouraged by a credit provider to overstate their income and understate their living expense in order to qualify. The case of National Credit Regulator v Shoprite Investments LTD [2017] ZANCT 98 (5 September 2017) serves as a good example of this. Thus, the information provided or agreed to by the consumer in a credit application is often unreliable. It is recommended that section 81(4) be amended to include factors that must be taken into account by a court or the Tribunal when making a determination of materiality of the	Proposal supported, bill to include factors that must be taken into account by a court or the Tribunal when making a determination of materiality of the consumer's failure.

	consumer‘s failure.	

Clause 11 – insert section 82A: Empowering the NCR to suspend reckless credit agreements

Dti supports 82A(1) and (3) specifically

DCASA supports added powers to NCR and NCT iro declaring a credit agreement reckless.

Summit supports power to NCR to do an interim suspension of a reckless credit agreement

DCASA **FRB** **IDC** **LNBLA** **Summit**	Reckless Credit is well defined in the NCA. What is required is a defined process to conduct Reckless Credit assessments within defined timeframes. The lack of a defined process and timeframes leads to process delays created by Credit Providers. The proposed criminalisation process will have a defined consequence of driving more Debt Counsellors out of the industry. A main reason for the lack of Reckless Credit applications by Debt Counsellors is directly related to the cost of providing the service without the prospect of compensation and the reality of a Cost Order against Debt Counsellors as applied for by Credit Providers. One of the proposals contemplated in 2007 was to introduce a fee payable by Credit Providers if a matter is found to be reckless. A review of this proposal may well be a solution and should follow any Reckless Credit Judgement by a Court or Tribunal.	PC to consider Concern – defer to dti Bill to allow for more research before legislating?
Summit	However, the prevalence of reckless credit granting is due to the lack of proper enforcement and not reporting.	PC to consider.
LNBLA **Summit**	The Bill introduces general offences relating to credit agreements, including offences in relation to reckless lending. This is especially problematic, considering that our law is not settled on the criteria for reckless lending. The current legislation on the affordability assessment of credit agreements is insufficient and leaves room for manipulation and error.	PC to consider. Concern – defer to dti Bill to allow for more research before legislating?
Summit	The Bill does not allow for a mechanism to ensure compliance with this section.	Consider in light of the above
Summit	It is suggested that all registered credit providers and debt counsellors provide annually or monthly reports on any reckless lending cases referred to the NCR. The NCR will then be able to pick up on reckless credit trends and act accordingly.	PC to consider.
Justice:	It is suggested that the heading of section 82A should reflect all the provisions of the section and not only the suspension of a reckless credit agreement by the NCR. It is suggested that the heading could read **“Report, investigation and suspension of reckless credit agreement”.**	Amend heading.
AGBIZ **AMC** **BASA**	(1): CP to report The obligation may be very difficult to give effect to & poses anti-competitive risk. - CPs do not have access to all of the relevant information used by other credit providers - insufficient evidence on a credit report to assess whether another credit agreement is reckless.	Concern – defer to dti Bill to allow for more research before legislating?

CGCSA **CPF** **DCASA** **Finbond** **NT** **Z Coetzer** **LNBLA** **K Louw** **R Marais** **MMI** **NCRF** **NDCA** **Nedbank** **StandardB** **TCRS** **Truworths** **Wonga**	- The assessment of risk contains a level of subjectivity (different credit providers have different risk appetites; formulate different business plans) - It would be prohibitively expensive to analyse reports to identify if other credit agreements on a report are reckless - in terms of time, training required, resources required - The complexity and expense of IT systems required to implement this on a mass scale would be completely impracticable. - Credit information sharing in South Africa is one of the best in the world because of collaborative efforts. This could wreck the current system of reporting – referring a competitor may be professional suicide. - CPs and DCs could make frivolous allegations without any penalties or recourse to the affected CP (anti-competitive) It is proposed that amendments could be made that make reckless lending easier to prove. The PC may look at cases to see whether the current affordability regulations have led to desired outcomes. Propose clause be removed – NCR can do other things to address reckless lending (BASA Ann A p17-18) DTI: in presentation – understand risk. Perhaps should not proceed with this clause.	
Summit **NDCA**	What would the format of the report be and the process to report? It is also unclear what will constitute a failure to report. What factors will be considered in determining a credit provider or debt counsellors failure to report?	The format of the reporting will be detailed in the regulations.
BASA **K Louw**	**Constitutionality of requirement to report reckless lending** This may affect the right to not incriminate yourself	If retained: Agree – need to clarify that is iro other credit providers only.
BASA **LNBLA** **NDCA** **Nedbank**	(1): If retained, need - criteria iro what would be ~~r~~easonable suspicion" – perhaps rather use ~~r~~easonable grounds" - provision that consumer and credit provider can enter into a new agreement that is not reckless - form, manner and content of report	If retained: Agree – need to clarify.
M Barnard **DCASA** **IDC** **Z King** **Summit** **NCRF** **NDCA**	**(2)** Forcing DCs to report and making it subject to a fine is unrealistic as reckless credit agreements are reported to the NCR and they do not take the matter further. - Credit Providers victimize debt counsellors who address reckless credit (ask for punitive cost orders) - Credit Providers delay iro handing over documents – sometimes documents have been amended. Because you need the original it is difficult to get the first agreement out of the Credit Provider: Locally, many high court cases (particularly around Bonds) have been held where the banks have no actual record of the original credit agreements and the evaluations done at the time. It seems this may be a systematic problem and real risk to the banks. - A Reckless Credit Investigation doubles the time period taken for a Debt Review and is costly. This	Concern – defer to dti Bill to allow for more research before legislating? If retain – amend the requirement to report to both NCR and Mag Court.

	makes each application at least half as profitable for a Debt Counsellor. - DCs may have to report every agreement to avoid fines (and thus also have to report all to the Magistrate's court) - The more agreements to be investigated and the more to be reported, will flood the system. In terms of Section 138 the NCR may refer the reckless matter to a Debt Counsellor (Section 139(1)(b)(i)) or Ombud ((Section 139(1)(b)(ii)) or Inspector ((Section 139(1)(c). If a possible reckless matter is referred by the NCR to a Debt Counsellor and no reckless substance is found and reported as such to the NCR the NCT may impose an administrative fine for not reporting a reckless matter in matters where the NCR do not agree with the finding on the Debt Counsellor. This will create legal uncertainty and expose a Debt Counsellor to uncontrollable risk. It is also a circular process.	
M Barnard	**(2) –** Add —…to— (a) the National Credit Regulator <u>in terms of section 136</u> where the debt counsellor rejects the application as contemplated in section 86(7)(a) or <u>(b) To the Magistrate's Court where the debt counsellor makes a recommendation contemplated in section 86(7)(b) or</u> <u>(c) the Magistrate's Court where the debt counsellor makes a recommendation in terms of Section 86(7)(c)</u>	Amend.
CGCSA **NCRF**	**(2)*(b):*** The cross-reference to section 86(7)(b) in proposed new section 82A(2)(b) should be to section 86(7)(c) The clause is contradictory because the reason for the obligation to report to the NCR is to alert it to a possible reckless credit agreement but the cross-references to sections 86(7)(a) and (b) refer to situations where a debt counsellor concludes that the consumer is not over-indebted even if there was a reckless credit agreement (sections 86(7)(a)).	Amend.
CGCSA	**(3)**: The proposed new section 82A(3) is unnecessary as section 151(1) already permits the NCR to impose administrative fines in respect of required conduct that is not carried out.	Amend – NCT to advise: delete?
Summit **NDCA**	**(3):** It is unclear how the failure to report by credit providers and debt counsellors will be brought to the attention of the Tribunal. No procedure has been put in place to ensure that the information reaches the Tribunal. It is also unclear if failure to report can be brought to the Tribunal's attention by an interested party, and if only the NCR can approach the Tribunal with concerns of failures to report.	PC to consider.
NCRF	This clause is absolutely unreasonable. It is not the role of credit providers to police each other.	PC to consider.

AGBIZ **BASA** **M Barnard** **Z Coetzer** **CGCSA** **CPF**	(4): NCR may suspend (powers / role of NCR / NCT) The fact that the NCR can initiate, investigate and adjudicate on the matter allows the NCR to be a player and referee (De Lange v Smuts - lack of independence can result in arbitrary decision making). The power to suspend agreements should be vested with the Tribunal	Concern – unforeseen consequences of changing powers / roles of NCR / NCT: Defer to dti Bill to allow for more research before legislating?
AGBIZ **BASA** **Z Coetzer** **CPF** **Finbond** **FRB** **LNBLA** **R Marais** **NDCA** **Wonga**	(4): NCR may suspend (process – **Audi**) Audi alterem partem: the credit provider does not have an opportunity to state its case (fall short of the right to just administrative action). FRB: Credit Provider should have a right to make submissions	If retained, amend to make process in NCR clear.
BASA **FRB** **LNBLA**	(4): If retained, the NCR must be obliged to notify the credit provider against whom the allegation is made within a specified timeframe and give them an opportunity to make submissions + Impose consequences on the NCR if they fail to achieve the timeframes + penalty for frivolous / vexatious reporting + review / appeal to NCT / Court should be available	PC to consider. Amend - Appeal / review to be included.
M Barnard	(4): ~~"~~The National Credit Regulator must investigate the <u>complaint</u> ~~report~~ contemplated in subsections…"	Amend.
CGCSA	(4): If the NCR determines that it is reckless credit, the matter is handled in terms of proposed new section 82A(5) (and not in terms of s139(1)(b)).	NCR to advise.
DCASA **Finbond**	(4) Without a clear process or format for reporting, reporting would be inconsistent iro quality and substance – a lack of due process may be unconstitutional	The format of the reporting will be detailed in the regulations.
NCRF	(4): If the NCR ~~"~~must" investigate, this will increase its workload to an unmanageable level. The NCR must first approach the Credit Provider – what process will be followed?	Investigation can be both formal and informal- the section should be clear that even informal investigation through the Complaints Department will be regarded as an investigation.
Nedbank **WC**	(4) Only the NCT and Courts should be able to suspend agreements. This clause gives the NCR more powers than even the courts have (to suspend before evaluating)	PC to consider.

AGBIZ:	(5)*(b)*: Referral to NCT to make a finding iro reckless credit Not in favour of a single member of the Tribunal adjudicating reckless credit in relation to section 82A.	The Bill only provides for a single member to hear debt intervention matters. Not reckless lending matters.
M Barnard **Summit** **SAIPA**	(6): S84(2)(b) cannot be made excluded - If the NCR makes a mistake the consumer will pay the price. Referrals take months sometimes more than a year. If the Tribunal then finds the agreement not to be reckless, all fees and interest can be added again retrospectively in terms of the wording of the Bill. Such and order will leave an often already financially over-burdened consumer with even more debt. This is especially concerning if one takes into account that a consumer might not have requested such a referral in the first place. It is submitted that if the Tribunal finds the agreement not to be reckless and lifts the suspension, section 84(2)(b) must still be applied to the credit agreement, or at the very least be to the Tribunal's discretion	Concern – defer to dti Bill to allow for more research before legislating? PC to consider.
M Barnard	Add: (7) A credit provider must within 5 business days provide all requested documentation relating to a reckless credit investigation after receipt of such a notification. (Form to be included)	Concern – defer to dti Bill to allow for more research before legislating?
BASA **CGCSA**	We are concerned that the NCR will not have the necessary capacity to deal with an avalanche of suspected reckless lending reports.	NCR will provide an implementation plan detailing how its capacity must be enhanced.
CGCSA **R Marais**	What relief will a credit provider have if a credit agreement that was suspended by the NCR is subsequently ruled not reckless by the NCT.	PC to consider.
DCASA	One matter that needs attention is where an application is received in terms of Section 86(6) and possible reckless credit is identified and referred to the NCR. The Consumer will lose protection on the expiry of 60 business days unless the reckless matter has been referred to a Magistrate Court. Where a possible Reckless Credit matter has been referred to the NCR, the Consumer should receive protection similar to the process where a Reckless Credit matter has been referred to a Magistrate Court.	NCR agrees with the proposal-rewording of the section to be considered to include referral to the NCR.
R Marais	Need mechanism to hold NCR and NCT accountable for failure to curb reckless lending	PC to consider.
R Marais **Summit**	Instead of this process, rather allow DCs to directly approach magistrate's courts or the NCT - Although the Act allows for these types of applications, the Tribunal currently does not have a set procedure for debt counsellors to refer these cases to them. It is submitted that the Tribunal makes provision for a procedure in terms of which a debt counsellor can refer a reckless credit matter in conjunction with a debt restructuring proposals to them.	NCT to respond.
Summit	In terms of the debt counselling procedure, if all parties consented to the terms of repayment the debt	PC to consider.

	counsellor can refer the matter to the Tribunal for a consent order. However it may happen that the debt counsellors suspect one or more of the consumer‘s credit agreements as being reckless. Will the debt counsellor be able to bring these credit agreements to the Tribunal‘s notice and request a declaration of reckless credit as well as an order to restructure the consumer‘s debt obligations as stipulated in section 83(3) of the Act?	
Nedbank	If an agreement is found reckless on the basis of a mere suspicion, the consumer who was a party should be listed on a credit bureau and precluded from further lending	Rationale is not clear.

New Clause

Summit	However, it is the opinion of some magistrates that section 83 of the NCA does not allow for a self-standing reckless lending application. They postulate that reckless lending can only be raised in an application for debt counselling, or as a defense in a summary judgment procedure. Other magistrates accept self-standing reckless lending applications and hear the matters as part of the motion court proceedings. This is also a costly process and thus not all reckless credit cases can be challenged in the manner. The Tribunal does not currently have a process in terms of which reckless credit matters can be referred to them directly. ~~D~~despite any provision of law or agreement to the contrary, ~~in~~ any court or Tribunal ~~proceedings in which a credit agreement is being considered, the court or Tribunal, as the case may be,~~ may declare that a the credit agreement is reckless, as determined in accordance with this Part.”	PC to consider – making direct access to NCT and Mag Courts available may be a better stopgap (until the dti‘s Bill is introduced) to deal with reckless credit than a requirement to report.

New Clause

DTI	Section 83(A) – insert a clause on cancellation of debt- in order to amend the principal Act.	Need clarity.

Clause 12 – Section 85: Providing for a court to refer a matter to the NCR for consideration of the debt intervention measure

BASA **DCASA**	Courts may not be equipped to do this investigation We recommend that: - The court should at least have some objective facts, information or documents before it so as to formulate its suspicion; - The credit provider should also be permitted to refute the allegation or suspicion of the court and make submissions in that regard; - Propose that the court should rather ask consumer why he or she did not apply for debt intervention prior to litigation. We suggest that the court be guided by relevant qualifying criteria in its assessment and decision; - NCR should be required to report back to the court otherwise procedures would be pending before various forums (NCT and court) relating to the same consumer and at the same time; - Timeframes / time limit must be prescribed within which the NCR must provide a recommendation to the NCT and the court. - the matter before the court should be stayed pending the consideration by the debt counsellor, NCR or NCT. This stay should only be for a reasonable period. National Credit Regulator v Shoprite Investments Ltd (NCT/32946/2015/140(1)) [2017] ZANCT 98 (5 September 2017) in Paragraph 108: "It must however be noted that the consumers who have been found to have been granted credit recklessly by the Respondent may not even be aware of this matter. They have not been cited in any way as parties and were not involved in the proceedings in any way. The possible consequences of having their financial situation assessed and found to be over-indebted may have serious implications for the consumers concerned. These consumers may not want their financial situation assessed in any way. It must therefore be clearly noted <u>that these consumers must voluntarily agree to the process of having their financial situation assessed by a debt counsellor</u>. Should any of them refuse or not wish to cooperate in any way then they cannot be forced to do so and the matter ends there for that particular consumer. Although Section 83(3)(a) of the Act requires the Tribunal to consider whether the consumer is over-indebted it could never have been the intention of the legislature that they could be forced to have their financial affairs assessed. They must further be informed by the debt counsellor exactly what the implications may be if they are found to be over-indebted and of the possible suspension order the Tribunal may make.".	Amend – so that court gives the consumer an option for referral. Perhaps cases before courts should not be excluded from the debt intervention measure – but this would mean cooperation between the NCT / NCR and Justice.
NDCA	The court should rather refer to a debt counsellor, but how will a court know which DC to refer to?	PC to consider
StandardB	It is submitted that there needs to be timing included in this provision, similar to the timing provisions set out in a debt review context so as to overcome practical/operational difficulties. We suggest the following:	Time frames to be detailed in the regulations.

	85(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) within 10 days of the aforementioned referral.	
WC	The wording may be constricting the powers of the court. Recommend adding that a Court, where it has sufficient information to its disposal, may make an order that is appropriate under the NCA	PC to consider – this could be a good alternative – practicalities to be considered (reporting to credit bureaux; considering all agreements etc).

Clause 13 – Section 86: Making it compulsory for a debt counsellors to always consider whether agreements are reckless

BASA NCRF	~~(~~6) A debt counsellor who has accepted an application in terms of this section must in the prescribed manner and within the prescribed time determine –”	(6) already includes the word ~~d~~determine”.
BASA	This amendment is not supported. If retained: - to prevent vague and frivolous allegations, the debt counsellor must include a summary of their preliminary assessment; - need a prescribed limitation on the information/documents/records that debt counsellors may request; - the administrative burden on credit providers will increase - requests for information should be limited to standard documents/records (BASA provides a list). - credit providers may still charge for the replacement copies of documents already provided to consumers or for historical documents. The charges are governed by regulation. To prevent charges, debt counsellors must endeavor to obtain documents and information from the consumer directly; - Form 16, which lists what the consumer must provide his/her debt counsellor upon application for debt review, must be amended (BASA gives a list of further documents to be included) - there should be a ~~c~~ut-off time” (analogous to prescription) by when debt counsellors may investigate credit agreements for alleged recklessness e.g. when a consumer has paid his or her instalments under a credit agreement for 5 years before he / she goes under debt review. Perhaps credit agreement older than 3 years should be excluded	PC to consider – given the impact of this requirement, it is recommended that this be deferred to the DTI‘s Bill for further research.
M Barnard (Debt counsellor)	Problems in addressing reckless credit 1. Credit provider‘s aggressive approach when a debt counsellor addresses reckless credit. 2. Magistrate‘s need to be trained to identify and address reckless credit. 3. Credit Providers must be forced to submit documents within a prescribed time in any reckless lending investigation after receiving such a notification – To be included in Section 82(A)(7) 4. Debt Counsellors and Consumers to be protected against costs orders when addressing reckless credit	PC to consider – given the impact of this requirement, it is recommended that this be deferred to the DTI‘s Bill for further research.

DCASA Summit	The second effect of the proposed amendment is that reckless lending assessment will become a mandatory function for the Debt Counsellor but without proper consideration of how the Debt Counsellor should be compensated to perform this function. A reckless credit assessment requires a minimum of 7 hours dedicated work. The continued failure of the NCR to review Debt Counsellors fee structures since 2010 remains an obstacle in possible reckless credit assessment which if not addressed in the proposed amendment will continue to render the proposed amendments unworkable.	PC to consider – given the impact of this requirement, it is recommended that this be deferred to the DTI's Bill for further research.
Z King	This clause poses a risk to the banking system, NCR capacity, court system and DC industry	PC to consider.
R Marais	Section 86(6) to be amended to exclude the request of consumer to have reckless credit addressed but that any consumer can approach a debt counsellor for reckless credit intervention	PC to consider.

Clause 14 – Section 88A: Application for debt intervention

DTI supports the definition of a debt intervention applicant

Nedbank does not support the discharge of debt as it suggests to consumers that they can incur debt and then default

SACRRA is in support of the need to assist consumers who are unable, through no fault of their own, to meet their credit obligations and to this end offer the following input to the Portfolio Committee on Trade and Industry. Further we would like to offer our assistance in facilitating the definition and flow of information to be exchanged, reported, returned and managed to achieve the objectives of the Bill.

BASA: DCASA: Black Sash Summit Truworths	The process is not clear and is cumbersome – process should be prescribed (manner and form). NCR may not have the capacity to execute. Targeted Consumers are not in a position to provide proof of income for 6 months, list of assets or professional tools, furniture, etc. The application process needs to be substantially simplified. The prescribed forms and procedure must be user friendly and easy to understand with clear guidelines and a step-by-step process The process allows consumers to approach the NCR directly with applications. It is Summit's opinion that the amendments fail to take into account the access these consumers might have to cellular telephones, email, computers, registered mail, fax machines and the like. By stating that consumers are required to bring these debt intervention applications themselves, the amendments place a burden on these consumers that they in all likelihood will not be able to satisfy.	The manner, form and timelines for applications to be detailed in the regulations. PC to consider.
WC	Provide for DCs to refer persons qualifying for debt intervention to the NCR	PC to consider.
BASA DCASA LNBLA	**Timeframes** for completion of defined milestones are necessary + imposing consequences on the debt intervention applicant and the NCR if they fail to comply with the prescriptions and specified timeframes. Provide for the termination of applications for debt intervention if the NCR did not meet the prescribed	PC to consider.

	timeframes for the evaluation and finalising thereof. The lack of a defined process with timelines and forms will render the proposed process un-implementable. In order to be effective the process, timelines and forms need to be included in the Bill and not in any proposed subsequent Regulations. FRB: Process should be completed within 30 business days from receipt of the application	
BASA **CGCSA**	The debt intervention process proposed in section 88A to 88E should only be available to consumers for a maximum period of 1 years. This would limit the negative credit impacts. There should be a cut-off date for applications	PC to consider.
NT:	**88A(1)(a)**: Clearly specify that ~~d~~debt intervention applicant" is only iro unsecured debt (implied by 88(2), but this definition is much wider)	Amend definition (add).
Justice **CBA**	~~„~~**debt intervention applicant"** means a South African citizen or permanent resident ~~that~~ *who* is a natural person…"	Amend.
Justice **NT** **AMC** **BASA** **CGCSA** **DCASA** **Z King** **Summit** **NCRF** **NDCA** **SAIPA** **StandardB** **TCRS** **WC**	**88A(1)(a)**: Why are ~~d~~isabled person, a minor heading a household, or a woman heading a household" specifically mentioned? Is there a specific benefit to these groups (a woman heading a household could be wealthy). The person in question would have to be a consumer in terms of the NCA – if these persons are not consumers in terms of the NCA the sub-clause does not apply: It is most improbable that the minor would be a consumer so the Act would in any event not apply to the minor. Why are the elderly not included? Including a minor is against s60 which states ~~e~~very adult" Why are men not included? Include u/21 unemployed persons	Amend definition (delete – causing confusion and included for clarity only).
AMC **BASA** **DCASA** **Z King** **Summit** **NCRF** **NDCA** **SAIPA** **Truworths**	**88A(1)(a)**: This section makes no consideration of household income. A household of three with three incomes of R7 000 is much better off than household of R10 000 supporting 10 individuals Where married in community of property, the joint estate should be considered. Household should be defined – would it include dependents even where there was no legal adoption? NCRF: ~~"~~household" means one or more adult persons who are part of the consumer's immediate family or household and who share their financial means and mutually bear their financial obligations". This definition is aligned with that in section 78(3)(b) and applies for purposes of the affordability assessment process referred to in section 81(2) and regulation 23A	PC to consider household / joint income v individual income. If agree on household – see NCRF's definition.

TRCS	**88A(1)(a)**: How will the debt be handled if consumers are jointly and severally liable? Or are married in community of property?	NCR to advise. The consumers will be co-applicants, with each consumer's salary not exceeding R7500? Policy consideration and requires further debate.
DCASA	**88A(1)(a)**: Based on our experience Consumers with a monthly income of less than R7 500 will be challenged to provide the information required in any meaningful way. They have very limited access to airtime. They would need assistance to complete an application form. They do not have access to fax or e-mail. They will not be in a position to provide the information requested in any meaningful way. These Consumers generally comply the requirements set out in (i)(ii)(iii)(iv)(v)(vi) in any way. If required how will the information be validated and by whom.	PC to consider (see proposal of working through DCs).
MFSA	**88A(1)(a)**: See tables in submission – p13 indicates most affected income group is R4000 to R5,999. Propose debt intervention available to consumers who owe more than R10,000 and earn less than R6000 + 3+ months in default	PC to consider.
Chamber OM	**88A(1)(a)**: The maximum of R7500 will exclude mining employees	PC to consider.
CGCSA **Z King**	**88A(1)(a)**: CGCSA:48% of unsecured credit applications are from people who earn less than R7500. Consumers who earn less than R7500 per month cannot be regarded as indigent as they make up a large proportion of the credit applications Rather limit the measure to vulnerable consumers who cannot meet their debt obligations, such as retrenched customers (not dismissed customers) who do not have credit life insurance.	PC to consider.
FRB **IDM** **Z King**	**88A(1)(a):** Persons earning R5000+ can and are accessing debt review (See IDM stats – even less than R3500, however consumers earning less than R3500 constitutes a loss for a DC)	PC To consider.
K Louw **NCRF** **TCRS**	**88A(1)(a):** No indication of how the R7500 was arrived at No SEIAS done	Update Memo on objects. Consider NT report?
Black Sash	**88A(1)(a):** Welcome the R7500 limit as it will cover social grant recipients	Noted.
NCRF **NDCA**	**88A(1)(a):** How will the income be verified to avoid abuse?	UIF and SARS data, where possible may be utilised for verification.
NCRF **TCRS** **Truworths**	**88A(1)(a):** Recommend that the household's income should be no more than R3,500 per month. The latter figure correlates with the national minimum wage currently under consideration	PC to consider.

ADRA **BASA** **CGCSA** **NT** **IDM** **LNBLA** **R Marais** **Summit** **StandardB**	**88A(1)(a)**: Do the qualifying criteria include that an applicant who fits within the thresholds must also show that he or she cannot afford repayments / is **over-indebted** (as per s79 NCA)? The Bill does not require a consumer to be over---indebted to qualify for debt intervention. On this ground alone, the provisions of the Bill are entirely out of line with the Bill's stated objectives and may be unconstitutional as the rationale for the measure is missing. An applicant earning R7500/month with limited assets could have applied at the beginning of 2017 for a small credit line and been approved properly following a full and successful affordability assessment, and be continuously in an up-to-date status on her account, but still qualify to apply for debt intervention without any change in her circumstances	Recommend inclusion of requirement of over-indebtedness.
Nedbank	**88A(1)(a):** Add a debt service threshold to the criteria – i.e. how much of current income goes to debt?	PC to consider.
MFSA	**88A(1)(a)**: Consumers affected with a default status of 3 months or more would benefit the greatest from Debt Intervention, as they would have the highest probability of rehabilitation to remain future credit worthy consumers. At the same time, the lower level of indebtedness in the 1-2' month default category does not warrant extensive or open-ended Debt Intervention measures. Similarly, this lower percentage of indebted consumers who have entered the realm of adverse ratings, judgments and notices, do not warrant a Debt Intervention. If these consumers were monitored, identified and assisted earlier in the credit life cycle including through strengthening the implementation of existing legislative and voluntary mechanisms, these consumers would benefit from the appropriate available instruments to assist their financial management and servicing of debt obligations. Equally, the nature of the proposed legislated debt interventions, as contained in the Bill, does not provide the sufficient basis for driving widespread debt interventions across an extensive segment of the population. The data put forward demonstrates the percentage of consumers with a higher level of indebtedness is comparatively smaller.	PC to consider limiting the measure to consumers who are in arrears for 3+ months.
Summit	**88A(1)(a)(i):** It is suggested that the NCT and NCR be given the discretion to allow applicants who can only prove an income of less than R7500 over a 3 months' average	PC to consider.
MFSA	**88A(1)(a)**: A Means Test' should be conducted for all consumers, regularly, at certain points in time to ascertain the profile of consumers who may be indebted as well as their respective circumstances. This should also apply throughout the application of debt intervention measures to determine the continued eligibility of those who applied and benefitted from a first order debt intervention measures within the specified time period as contained in the Draft Bill.	PC to consider.
ADRA **BASA**	**88A(1)(a)**: The cause of the consumer's indebtedness must be considered and only bona fide consumers must benefit from the intervention.	PC to consider.
BASA	**88A(1)(a):** It should be part of the criteria that the consumer cannot make use of existing mechanisms as they either do not apply to the consumer or the consumer cannot afford them. Should also determine whether the applicant attempted to make lifestyle changes and adjustments in order to improve his or her financial situation;	PC to consider – could be included in application –What have you done to date to resolve the problem?" This could also address ADRA's comment iro bona fides of the consumer. Challenge – how to

		verify / evaluate?
LNBLA	**88A(1)(a):** The Draft Bill limits the applicability of debt intervention regulations to only South African citizens or permanent residents, whereas the right to apply for credit under the Act is afforded to every adult natural person. Such a limitation in the Bill seems unjustifiably discriminatory.	Proposal supported PC to Amend.
CGCSA	Debt intervention assistance should only be available to consumers who have already paid off a reasonable portion of their debt and who have an ~~-im~~paired record" and should only be allowed in exceptional circumstances, as it encourages irresponsible consumer behaviour.	PC to consider.
CGCSA	Exclude consumers who have been lawfully dismissed from work, or who excessively use drugs or alcohol, who have broken the law, have a gambling addiction, etc. The credit provider cannot be expected to be held accountable for these types of occurrences.	PC to consider.
K Louw MFSA	The right to write-off any debts for vulnerable consumers (as referred to in Bill) should have various safeguards. For instance, nowhere in the proposed Bill is there any express duty on an unemployed consumer to prove that he or she is looking for other employment. There should be a distinction between a consumer voluntary resigning from his or her employment and a consumer being retrenched. Merely writing off a debt if a consumer has no income or is unemployed will promote an environment of non-payment and might lead to consumers simply making sure they are not ~~-e~~mployed" so they can benefit from a debt reprieve. Consumers who are in between jobs and do not have fixed employment, should not automatically be eligible for debt interventions due to the change in circumstances – the consumers must demonstrate the period of distress and that they have exhausted other available measures. However, this must be subject to a sunset clause and strict parameters to ensure that consumers do not abuse this system and claim unemployment for extensive and consistent periods of time. If a consumer is still unable to find and retain employment, and after a certain period is still without a job, the onus is on the responsible credit provider to acknowledge certain factors based on the consumer's individual circumstances, and thus an acceptance of debt write off is necessary and undertaken.	PC to consider.
BASA CGCSA	**88A(1)(a):** It is not certain that a property and a vehicle can swiftly be converted into cash at a reasonable second hand value – these may thus not be realisable assets and may unfairly be excluded when considering whether a person qualifies. We therefore recommend that the clause be amended to expressly state that if a consumer owns a property or vehicle, that they should be excluded from applying for debt intervention, irrespective of their gross monthly income earned.	Amend – need to clarify.
NCRF TCRS	**88A(1)(a):** Is it correct to assume that consumers who have entered into or who are under/subject to administration, sequestration, debt review, or ADR are excluded from debt intervention?	PC to consider. Amend – make the intention clear.
NT: Black Sash	**88A(1)(b):** On the definition of ~~-r~~ealisable asset", the PC may consider excluding one RDP house from this list of realisable assets that could be liquidated to payoff outstanding debt	PC to consider.
Justice:	**88A(1)(b):** Iro ~~-r~~ealisable asset": an amount mentioned in an Act may become outdated and then needs to be amended by Parliament. Consideration could be given to provide that the value of the	PC To consider. However, if this is once off, there is no risk.

	assets should not exceed the amount determined by the Minister (of Trade and Industry) in the Gazette.	
Black Sash	**88A(1)(b):** The amount of R10,000 is too low and should be increased to R25,000	PC to consider.
ADRA BASA CGCSA DCASA Z King LNBLA Summit	**88A(1)(b):** Iro ~~r~~ealisable asset": What does ~~S~~wift" mean? How would ~~S~~econd hand value" be determined? Recommend that an asset which can be swiftly converted to cash <u>within a period of 6 to 12 months</u> would be considered a realizable asset.	To be considered. Amend.
BASA	**88A(1)(b):** It is unclear whether the term ~~a~~ssets" include movable, immovable, encumbered, unencumbered, tangible and intangible assets. We are of the view that it should include all types of assets	Amend – clarify.
BASA	**88A(1)(b):** Not all assets will necessarily be converted to ~~c~~ash", we therefore propose that the provision state that the assets could be converted to cash or a store of value held in a bank account.	Amend – clarify.
ADRA BASA LNBLA Summit	**88A(1)(b):** Iro ~~r~~alisable asset": How would ~~S~~econd hand value" be determined? We propose that an accredited and qualified valuer should be appointed to determine the value of the realizable assets and the assets which may be excluded. Alternatively, the structure of the sheriffs could be used to compile an inventory and then the valuer can use the inventory to provide the second-hand market value of the assets. These processes must however happen within clearly defined timeframes to ensure the process is not abused as a tactic to delay the inevitable to the detriment of the consumer or credit provider. This may be a labour intensive and expensive process. We are of the view that any costs in this regard should be borne either by the debt intervention applicant or the NCR.	Amend – clarify. The NCR proposes that the value stated by consumers in the application forms be accepted as the correct value, and a formal valuation be performed only in exceptional cases. Exceptional cases can be instances where it appears that the consumer may have undervalued.
NDCA	**88A(1)(b):** Realisable assets needs to state that furniture that is still under lease/ instalment agreements is excluded i.e. needs to be net asset cash conversion?	PC to consider.
MadibaBay Summit	**88A(1)(b):** Food must never be realisable – and should not be limited to one month. People may buy food on specials (thus for more than 1 month)	PC to consider.
CGCSA DCASA	**88A(1)(b):** A complex and extremely difficult matter to monitor. As a result of low re-sale values, more items will fall to be included into the ~~n~~ecessary" asset classification leaving less for the ~~r~~ealisation" asset classification, causing more consumers to incorrectly fall into the ~~n~~o realisable" asset classification net. The consumer would need to sit down before an individual and discuss his financial affairs and his assets in depth (like a debt counsellor). Consumers unfortunately might also sell assets because they have a drug or gambling problem but they can still hold down a job and service their debt obligations. We submit that it is much more effective to assess the customer's ability to service his/her debt obligations as triggering the need for debt intervention rather than having regard to the customer's	PC to consider ability to repay debt rather than using lack of assets as a measure (assets will have to be kept in mind as they can be sold to repay debts, but perhaps not as a requirement?)

	pool of realisable assets.	
Justice	**88A(1)(b):** S67(g) of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944) includes ~~s~~such arms and ammunition as such debtor is required by law, regulation or disciplinary order to have in his possession as part of his equipment". It is noted that this is not included here. Is it seen as part of ~~n~~necessary tools"?	Was discussed and agreed to exclude.
BASA StandardB	**88A(1)(b):** The cap of the excluded asset categories should be reduced from R 10 000 to R 5 000. The higher value of R 10 000 seems to be counterproductive to the consumer reducing his or her indebtedness and financial distress. We are of the view that a cap should be placed on necessary wearing apparel so as to prevent the inclusion of luxury items (like luxury handbags, shoes, jewelry, etc.).	PC to consider.
NCRF	**88A(1)(b):** The value of R10,000 seems to be arbitrary.	Amend memo.
DCASA	**88A(1)(b):** These consumers do not have these types of assets – it can be removed from the Bill	PC to consider.
BASA	**88A(1)(b):** Sub-clause (vi) should define a fund as per the Pension Funds Act, so as to prevent the inclusion of investments.	Amend.
NCRF	**88A(1)(b):** On what basis is a pension and retirement annuity excluded as a realisable asset? A retirement annuity is a monetary asset. It should be removed, or, if it remains listed in this clause, a maximum value should be placed on it as it will provide an opportunity for consumers to abuse this loophole.	PC to consider maximum value.
NCRF Truworths	**88A(1)(b):** At sub-clause 88A(1)(A)(ii), realisable assets, in light of the comments above on the assessment of income to be based on household income, must be that of the household and not just the applicant.	PC to consider.
NCRF NDCA	**88A(1)(b):** How will the NCR verify the value of the assets?	PC to consider – see proposal on over-indebtedness v assets.
NT: BASA M Barnard R Marais	**88A(1)(c):** Total unsecured debt: It is proposed that this definition be clearer to determine whether this refers to the capital amount only, capital plus interest, or capital plus interest plus any other fees related to the collection of that debt, including legal fees. Our view is that the Bill should cap only the capital plus interest amount; any fees imposed above that should be uncapped. Or principle debt + costs in section 101.	Amend.
BASA NCRF	BASA: We propose that the term ~~u~~nsecured credit agreements" should be defined as ~~a~~ credit transaction or credit facility in respect of which the debt is not supported by any pledge or other right in property or suretyship or any other form of personal security other than credit life insurance". NCRF: The inclusion of only unsecured credit in the Bill is questioned – there are other forms of credit which should be included, such as credit granted by the furniture retail industry.	PC to consider. NCR to advise iro whether the current wording excludes certain credit agreements that are not intended to be excluded – see

		BASA's proposed definition.
BASA **CGCSA**	**88A(1)(c):** The total unsecured debt should further be determined in accordance with section 113 and 125 of the NCA, therefore the settlement amount of each of the qualifying credit agreements as at the 24th of November 2017 and at the time of applying for debt intervention should be determined, the total of which should not exceed R 50 000.	PC to consider.
ADRA **CGCSA** **Summit** **Wonga**	**88A(1)(c):** The Bill unfairly discriminates against credit providers who do not have secured debt. Unsecured credit as provided for in the NCA forms only a small fraction of the total credit exposure of the average consumer and as such the debt intervention measure will not achieve its stated objective of alleviating the over-indebtedness of consumers. An ideal measure must take secured debt into account and the debtor must not benefit/be enriched by such intervention in that secured assets must be attachable. **CGCSA:** It should be made clear that credit providers may still proceed on secured debt. Summit: Secured assets should be excluded	Secured debt has an asset that can be realised. However, PC to consider if the total debt (R50000) should not include secured debt, but that the order that is made then excludes secured debt. This would ensure that the targeted group is more accurate.
DCASA	**88A(1)(c):** The legal uncertainty that currently exist in the interpretation of Section 103(5) will lead to disputes in the interpretation of (c). No process is imbedded in the bill to manage disputes. Qualifying Consumers will not be in any position to detect or dispute possible contraventions of (c). The proposed process also does not include any validation process for the debt by the NCR to enable possible disputes. The lack of a proper validation process will make it extremely difficult to detect non-compliance to section 101(1).	PC to consider.
NT: **CBA** **Z King** **Black Sash** **Summit** **NCRF**	**88A(2):** Recommend that the ~~-o~~nce off" nature and that fact that the measure only applies to unsecured debt be explicitly stated. Clarify whether the once off application for debt intervention is applicable to both successful and rejected applications Is it applicable to this measure only or to all debt interventions, or does the limit apply during a specified period? Black Sash: There should at least be 2 opportunities to apply given that small crises increase the vulnerability of the poor Summit: Multiple applications should be allowed when a person's circumstances so require, but previous applications and interventions should be taken into account.	Amend – clarify to what ~~-o~~nce off" applies.
NCRF	**88A(2):** What happens if the consumer goes through the process twice by accident?	Proper reporting to credit bureaus will prevent this.
NT:	**88A(2):** Debt that is owed to a debt collector (where the credit provider sold the debt to a debt collector) should be included. NT understands this must be done in consultation with Dept Justice. Propose	PC to consider.

	adding in: ~~...~~.credit providers or persons collecting on credit agreements."	
BASA Justice LNBLA WC	**88A(2):** Care should be taken to avoid unintended consequences if a date in the past is provided for. It is an accepted principle that legislation should, as far as possible, cater for future events and if the legislation is to be retrospective in nature there should be compelling reasons. This is more the case in criminal law LNBLA: Credit providers did not price for debt relief intervention.	The date is not retrospective. It limits the exposure to creditors iro the intervention measure. If the date is not included, all debt can would be subject to the measure.
BASA CGCSA	**88A(2):** In order to prevent abuse of the process by consumers, the consumer's total unsecured debt as at 24 November 2017 and upon the date of application for debt intervention with the NCR should not exceed R 50 000.	Amend – this is the intention.
Summit	**88A(2):** The date applicable should be the date of application – no cut off date	
CGCSA NDCA	**88A(2):** d 35.2. The new provisions envisaged in this Bill could come into effect months after 24 November 2017, rendering the November date quite arbitrary in its application.	PC to consider – See comments under transitional provisions.
CGCSA NCRF	**88A(2):** R50,000 is too high – see policy document on impact NCRF: Max R20,000	PC to consider.
Z King	**88A(2):** does this include or exclude any possible amount for developmental credit which will not be included in the debt intervention? Would their having such credit (which is not included in the process) exclude them from accessing the process, if it pushes their overall debt over the R50 000 threshold? Can the Minister later adjust this figure without an amendment to the Act?	PC to consider.
MadibaBay	**88A(2):** The amount of R50,000 is too low – it will not provide relief for assistance to homeowners. It should be R100,000,000	Secured debt is excluded.
K Louw NCRF	**88A(2):** No indication of how the amount was arrived at or why the cut off date. Propose no cut off date	Update Memo on objects.
DCASA LNBLA	**88A(2):** The effect of (2) is that the Consumer may have a secured debt (home, vehicle, furniture) which is excluded from the application. The consumer may also go ahead and incur more secured debt	Amend.
NCRF	**88A(3):** NCRF: Propose making the provision clear that the listed exceptions apply to both the once-off debt intervention provided for in proposed sections 88A to E, and the Ministerial proclaimed debt intervention measures provided for in proposed section 88F.	PC to consider – if it applies to 88F as well → amend.
BASA Truworths	**88A(3):** We propose that the following be added as further exclusions (and all should also be applicable to 88F): - if a credit agreement is subject to a debt re-arrangement order, as an existing measure of debt intervention is in process; - if a credit agreement is subject to a debt re-arrangement agreement, as an existing measure of debt intervention is in process;	PC to consider – recommend that these be excluded as well as these are similar to current exclusions.

	- if a credit agreement is subject to a consolidation agreement, as an existing measure of debt intervention is in process; and - if the credit agreement is a student loan as defined in section 1 of the NCA as not all student loans are necessarily developmental loans	
NCRF Truworths	**88A(3): Add (d):** to exclude credit facilities in terms of which the credit provider provides goods/services to the consumer and the outstanding balance under the agreement is less than a certain amount, such as R2,000, but this figure requires further in depth analysis. It is used here for illustrative purposes and as an indication. Debt intervention has potentially drastic consequences for credit providers and in the case of the credit agreements listed in this proposed section, the credit provider has provided the customer with goods, and consequently the effect of debt intervention is even more severe as the credit provider would be deprived of both the goods supplied and the amount owed for the goods.	PC to consider.
K Louw	**88A(3)(a):** Excluding certain credit agreements (e.g., development credit agreements) to not form part of the debt intervention mechanism is totally undesirable as set out in proposed section 88A(3)(a) and will not enable a consumer to receive proper debt alleviation. It also creates unnecessary loopholes for credit providers as well as consumers. Credit agreements will simply be described as ~~-d~~evelopment agreements" either by the consumer or the credit provider in an attempt to circumvent these provisions.	PC to consider.
Summit NDCA	**88A(3):** Legal action should not exclude an agreement – waiting for an intervention by the court is costly and time consuming	PC to consider.
Black Sash	The limitation should not exclude educational loans under Section 88A (3)(a) as contemplated in section 10 of the NCA . The threshold level for unsecured debt under section 88A(2) should be increased to at least R100,000 for education	See other comments on education – not all study loans are developmental. PC to consider increase proposal.
DCASA	**88A(3):** (b) The effect of (b) as proposed that the Consumer may have secured credit agreements which has not been excluded in the proposed amendment. In addition section 130 must clearly state when enforcement takes effect.	PC to consider.
K Louw	**88A(3)(b):** The proposed debt intervention mechanism has not taken into consideration the impact of administration orders, as regulated by the Magistrates' Courts Act 32 of 1944, on debt restructuring in terms of the NCA and on consumers qualifying for debt intervention. The same consumer may thus be under administration and debt intervention. It is undesirable to have the same consumer subjected to two different mechanisms simultaneously in dealing with his or her debt. If government is serious about debt alleviation, attention will be given to creating a single, effective, simple and cheaper debt alleviation mechanism that caters for all debts and not only for certain debts. Attention should be given as to whether or not administration orders still serve a purpose and truly assist over-indebted	PC to consider.

	consumers. If research show that they do not, they should be scrapped and fully be replaced by a debt alleviation process that caters for the needs of vulnerable consumers and permits them to deal with all their debt and not only certain debt (e.g., debt arising from credit agreements governed by the NCA).	
DCASA **NT** **NCRF**	**88A(4)(a):** Agree in principle, but how will it work in practice? How will an applicant prove that he or she does not have income (bank statement / filled out form?) Who is responsible for overseeing this process? How will education and assistance of consumers be dealt with? Propose that additional Minister Regulation powers are given in order to set procedural rules and timelines for debt intervention applicants. For example, how must an applicant apply, and by when? What is the cut-off date for assessment by the NCR and Tribunal? Pay slip or bank statement is not available in this market segment. What about informal traders, Gardeners, Domestic Workers or Consumers that do piece work. Unless defined this process may be challenged which will exclude many Consumers who should benefit from Debt Intervention. How can a Consumer prove expenses. Based on our experience a Debt Counsellor‘s proof of expenses is impossible to verify. Instead reasonable expense can be determined and verified by a suitably qualified person. The NCR staff are not trained for this purpose and neither is a NCT member. This will create uncertainty and unqualified interpretation. NCRF: Must verify a consumer‘s income	See attached process document provided NCR.
BASA **CGCSA**	(4): The documentary proof provided should be credible and authentic. The applicant should be required to depose to a statement of affairs under oath which includes: - the applicant has not applied for, nor is he / she subject to an administration order; - the applicant has not applied for or been provincially or finally sequestrated; - the applicant has not applied for or is subject to debt review or debt re-arrangement; - whether he/she has defaulted on any credit agreements and whether enforcement of these credit agreements have commenced; and - the reasons for the applicant‘s over-indebtedness or financial distress (so as to prevent mala fide behavior and the abuse of process). (BASA provides a number of things to be submitted – Ann A pp27 - 29) CGCSA – Regulation 24 information to be submitted	Some of the information can be verified through credit bureaus reports. PC to consider.
BASA	(4): The applicant should further disclose all liabilities, debt obligations and credit agreements to avoid abusing the process through the absence of having to provide information critical to the application. We propose that the information contained in regulation 24(1) and in the prescribed form 16 should be provided by the applicant (aligning with debt review process). (BASA provides a number of things to be submitted – Ann A pp27 - 29)	The contents of the application and what consumers must disclose will be detailed in the regulations.

DCASA	(4)(b) – (g): (b) Based on our experience Consumers may know the monthly payment due but on all cases have no information of the outstanding amount or exact date acquired. The proposed process has no embedded process to obtain the current outstanding value. This process is embedded in the Debt Review process. (c) to (g) Based on our experience as Debt Counsellors, Consumers do not have a copy of the Credit Agreement, Credit insurance agreement, possible restructure agreements, list of assets and value thereof. The process to obtain this information from Credit Providers is tedious and extremely time consuming and totally impracticable.	NCR to assist – PC to consider. Process similar to the debt review one to be considered- such as the provisions of Certificates of balance by credit providers. More details to be included in the regulations.
A King Summit	(4)(b) – (g): Consumers might not have original copies of these ‗credit agreement' documents and if credit providers hold back from supplying them swiftly it could delay applications dramatically. There is a potential problem here. Consumers should only supply a list of agreements, not the agreements themselves. The Credit Providers can provide the agreements when they are notified of the application	NCR to assist – PC to consider. The NCR agrees with the proposal that consumer only supply a list of credit agreements and not actual copies of the credit agreements.
NCRF	88A(4)(d): Sub clause 2(d): What is a credit insurance agreement? Is a credit insurance policy not what is meant here?	NCR to advise on wording – amend. Credit insurance as defined in the NCA.
NCRF	88A(4)(f): How will the NCR verify a debt intervention applicant's assets?	NCR to respond. The NCR proposes that the value stated by consumers in the application be accepted as the correct value, and a formal valuation be performed only in exceptional cases. Exceptional cases can be instances where it appears that the consumer may have undervalued.
NCRF Truworths	88A(4)(a), (b), (f): The household's information must apply and not just that of the applicant.	PC to consider.
StandardB	88A(4)(c) – add: ―redit agreements that relates to the unsecured debt or a signed certificate of balance from the credit provider along with a set of terms and conditions of the credit agreement that the consumer entered into with the credit provider"	PC o consider.
WC	88A(4)(c) – correct: ―credit agreements that relates to the total unsecured debt"	Amend.
WC	88A(4)(f): correct: ―….a setting out of all the assets owned by the debt intervention applicant…"	Amend.
Justice	**Additional: Justice:** Recommend that provision is made for another person to act on behalf of a minor who may not have legal and contractual capacity to enter into credit agreements or to apply for debt	Amend (add a subclause).

	intervention. Compare s2(4) of the Protection from Harassment Act, 2011 (Act No.17 of 2011): ~~-~~Notwithstanding the provisions of any other law, any child, or person on behalf of a child, may apply to the court for a protection order without the assistance of a parent, guardian or any other person.". The same may apply to a disabled person.	
CBA **Summit**	**CBA**: We further recommend that the Amended Bill include a provision that states that no applicant may apply for debt relief via a third party, unless he/she is incapacitated and provides medical proof thereof. **Summit**: The Bill should provide for applicants to elect a third party to represent them when submitting an application	PC to consider.

Clause 14 – Section 88B: Evaluation of the application
The dti: In favor of keeping internal within the NCR.

NDCA	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.	PC to consider.
Z Coetzer	The NCR in terms of section 15(a) may not adjudicate in disputes is also further developed in the rest of section 15 of the NCA read with section 139 and 140 of the NCA.	PC to consider – concern that relates to the role of the NCR. The NCR will not be making any final determinations; this role will remain with the NCT.
MFSA	Credit providers as well as the responsible entity entrusted with the authority to assess applications and grant debt relief must consider whether: • It is joint income • A result of tribal land • Takes into account work and household expenses • Consumers have dependents A means test must also be done – see comments at 88A	PC to consider.
BASA **Z Coetzer** **CGCSA** **LNBLA** **NCRF** **Truworths**	**Time limits** should be included + recourse to the credit provider if NCR does not achieve them: We propose recourse in the form of termination of a credit agreement from the debt intervention process as envisaged in section 86(10) for debt review, enforcement of the credit agreement with immediate effect by the credit provider as is envisaged in section 88(3) for debt review and the forfeiture by the applicant of any benefits obtained during the debt intervention process. **CGCSA:** 60 business days (3 months) to evaluate and reach a conclusion ito 88B(4) is reasonable	PC to consider.

	FRB: 30 business days **Truworths:** Iro (1) – add Within 2 months	
DCASA	In addition an affordability assessment by a suitably qualified person will be required to determine the possible and reasonable repayment amount or lack thereof. Outstanding balances and affordability assessment should be used to conclude a reasonable assessment and to structure recommendations. 88B It is unclear what the function is of the NCR. There are no processes for evaluation, to obtain information, skills required.	The process will be detailed in the Regulations.
Z King	The NCR are going to get applications from people who do not actually qualify. This section says they must' still initiate the process. This does not give them the option to tell people they do not qualify and not start the entire process. This means that the NCR will have to knowingly engage in a lot of work on matters which will not actually progress. Might the word: 'may' be better used? Perhaps the phrasing might reflect the need for an application to be complete (contain all needed info) before they do anything.	Check and make sure provision is made.
NT:	**88B(1)(b):** As per earlier comment, propose that this should be extended beyond credit providers to include those collecting on a credit agreement.	PC to consider.
FRB **LNBLA** **SAIPA**	**88B(1)(b)(i):** Credit providers should be notified within 5 business days of all information + any claims against credit insurance and be given 5 business days to respond with a certificate of balance SAIPA – **88B(1)(a) + (b):** need timelines	PC to consider. NCR to respond- Timeframes will be expounded in the regulations.
CBA **SACRRA**	S88B (1) (b) (ii): The National Credit Regulator should not notify ALL registered credit bureau, but rather only the approved credit bureaux who are able to list and remove the information pertaining to debt relief on their credit bureaux. The effect of this listing will be discussed and agreed at the proposed industry forum. There are 20 registered credit bureaus in South Africa, but only 6 of the registered credit bureaus are currently approved by the NCR to host the Payment Profile Data to which all credit agreements pertain and all approved bureaus are expected to hold the same Payment Profile Data.	Amend.
NT:	**88B(1)(c):** As per earlier comment, propose that this should be extended beyond credit providers to include those collecting on a credit agreement.	PC to consider.
NT:	**88B(1)(c):** Propose should include applicant's ~~in~~come, expenses, assets and liabilities"	Amend (add).
LNBLA	**88B(1)(c):** NCR should also provide the consumer's expenses to the credit provider	Amend.
NCRF	**88B(1) –** Suggest adding: ~~(~~d) confirm that the debt intervention applicant is not under debt review, and	PC to consider – Recommend

Truworths	if he/she has been under debt review in the previous 6 months, ascertain the reasons for the cancellation of the debt review"	adding to confirm whether currently under debt review.
Truworths	**88B(1)(c):** Add –~~i~~n the prescribed manner and form"	
NCRF	**88B(2) -** the duties of the credit provider need to be stipulated and use of vague wording, such as ~~r~~easonable requests" and ~~p~~articipate in good faith" need to be elaborated on.	NCR to assist with wording, The duties will be elaborated in the regulations.
WC	**88B(2)** – correct: —.who applies for ~~the~~ debt intervention…"	Amend.
AMC **BASA** **CGCSA** **CPF** **DCASA** **DTI** **FRB** **LNBLA** **K Louw** **Summit** **NCRF** **StandardB** **TCRS** **Truworths** **Wonga**	**(3): Audi**: A credit provider has no right to argue or oppose the application where the applicant is acting in bad faith or in general make any representations, thus depriving the credit provider from any opportunity to make submissions. This is grossly unfair and does not provide for due process. BASA: NCR should obtain a list of the applicant's credit providers from the applicant and the credit bureaux and then notify the credit providers of the application for debt intervention. We propose that the credit providers and credit bureaux should be notified of the debt intervention application in a similar form as used in the debt review process; that is the prescribed form 17.1. DTI: We recommend that the credit providers be allowed to make submissions to the NCR during the application evaluation stage. DCASA: What is required is a process similar to the Debt Review process where Credit Providers are notified of the application and within 5 business days are required to provide the Certificate of Balance and date acquired or information of enforcement action. This information should be used to determine qualifying criteria. Summit: The Regulations which will set out the procedure for debt interventions applications must afford credit providers an opportunity to confirm the content of the debt intervention application and to raise any disputes StandardB: Suggest adding: 88B (2) (c) request submissions from the credit provider in relation to the credit agreement in question	Implied – recommend that it be made clear.
BASA	**(3)(a):** It is not clear what is meant by ~~a~~ dereliction of required conduct" as it is not clear how a credit agreement could result from prohibited conduct or a dereliction of required conduct. The consequence or recourse in this regard is further not clear. The NCA defines prohibited conduct in section 1 as ~~m~~eans an act or omission in contravention of this Act", prohibited conduct thus relates to actions and omissions. We are of the respectful view that the dereliction of required conduct is an omission which is already catered for under the definition of prohibited conduct.	Amend – align with definition.
BASA **CGCSA** **Summit**	**(3)(a):** Section 55 relates to compliance notices. The continuous reference to section 55 in the proposed section is not clear as to how these fit into reckless lending, prohibited conduct and dereliction of required conduct.	NCR to assist with correct wording.

	The NCR may investigate the matter, send a section 55 compliance notice and then draw the NCT's attention to these agreements and ask for an appropriate order.	
BASA	**(3)(a):** In the proposed section **88B(3)(a)** reference is made to ~~-u~~nlawful transactions". This terminology is misaligned with section 89 of the NCA and should be changed to ~~-u~~nlawful credit agreement" to avoid the Bill being ambiguous.	Amend.
Summit	**(3)(a):** Rephrase (3)(a): ~~-m~~ay constitute reckless ~~lending~~ credit contemplated in section 80, or may constitute an unlawful ~~transaction~~ credit agreement contemplated in section 89, or contain an unlawful provision as contemplated in section 90 ~~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~~"	Amend.
Summit	**(3)(a):** What does ~~-se~~parate the agreement" mean? Will it be excluded from the debt intervention?	Amend.
BASA	The proposed section **88B(3)(b)** refers to secured debt, however there is no definition of same. We propose a definition as follows: ~~-a~~ credit agreement in respect of which the debt is supported by any pledge or other right in property or suretyship or any other form of personal security other than credit life insurance".	Amend.
NCRF	**(3)(a) and (b):** There is no reason as to why the NCT must be informed under subclauses (3)(b) and (c) hence the amendments suggested	NCT and NCR to assist.
BASA CGCSA	**(3)*(c)*:** It is important to note that a consumer can only claim under a credit life insurance policy if an insured event has taken place like death, permanent disability, temporary disability, or retrenchment. If there is no insured event, there would be no claim for the insurer to honor. - Add ~~-w~~here appropriate"	NCR to assist on how to process this.
BASA	**(3)*(c)*:** It seems that the proposed section 88B(3)(c) is in conflict with the proposed section 88C(3)(c). Under section 88B a credit agreement or the part of a credit agreement subject to credit life insurance is excluded from the debt intervention application whilst in section 88C these credit agreements are included and the debt intervention application postponed to finalise the relevant credit life insurance claims. We propose that the clauses be aligned to not contradict with each other.	Amend if necessary.
BASA	We are of the respectful view that the NCR should consider all submissions, documents and information obtained from credit providers, credit bureaux and the debt intervention when conducting the evaluation as envisaged by proposed section **88B(4).** **Things the NCR should consider when evaluating to ensure the consumer is in need of assistance:** - determine whether the applicant has any cash or share investments which could be realized in order to improve the applicant's financial situation; - review the applicant's insurance and assurance policies so as to prevent over-insurance; - review all realizable assets and ensure that same is sold to reduce the applicant's indebtedness (the NCR should recommend that the debt intervention applicant realise any assets to reduce over-	PC to consider – NCR to assist iro the processes here.

	indebtedness or financial distress); - review the deeds office records to ensure that the applicant does not have any immovable property that he/she is not declaring; - review of the applicant's accommodation and possibility of obtaining more affordable accommodation; - review of the applicant's transportation expenses and proposals for less expensive transportation, e.g. use of public transportation; - review of the consumer's telecommunication contracts and proposals to obtain more affordable telecommunication, e.g. less data for games, movies, etc.; - proof of any maintenance orders payable by the applicant; - if the applicant is supporting relatives, it must be substantiated with proper reasons and proof; and the exclusion and reduction of all the applicant's unnecessary or luxurious living expenses (such as domestic workers, garden services, excessive spending on alcohol products, tobacco products, entertainment, gambling, recreation, holiday clubs, children's pocket money, tithes/donations, cosmetic services, oversees holiday travel, etc.).	
NCRF	88B(4): NCR to notify all credit providers and registered credit bureaux	Amend.
NT:	**88B(4)(a):** Qualifying criteria needs to be clearer. Specifically: does an applicant only have to comply with the thresholds, or must the applicant also prove that he or she cannot pay based on an income/expenses sheet?	Recommend that over-indebtedness be included as a criteria.
WC	**88B(4)(a):** Correct: —…~~d~~es not qualify for ~~the~~ debt intervention…"	Amend.
DTI	**S88B (4) (b):** If the NCR concludes that a consumer does not qualify for debt intervention, the NCR can refer that consumer to other relevant authorities. Consequential amendment: delete s88D(1)(b).	Amend (adjust wording) + consequential amendment.
Black Sash	**S88B (4) (b):** This referral should allow the consumer access to free DC services	PC to consider.
WC	**88B(4)(b): "**…debt intervention applicant to a debt counsellor for debt review or assistance with a ~~voluntarily~~ voluntary plan of debt re-arrangement…"	Amend.
Summit	**S88B(4):** The applicant should not be rejected for debt intervention as the applicant may qualify for both.	PC to consider.
WC	**88B(4)(b):** Correct: —…d~~e~~s not qualify for ~~the~~ debt intervention…"	Amend.
DTI	**Section 88B (4) (c)-** NCR to refer to the NCT with recommendation- within a prescribed period.	Amend (add).
BASA	The proposed section **88B(4)(c)** should refer to —p~~p~~rohibited conduct" and not ~~"~~prohibited behavior".	Amend
Summit	**Section 88B (4) (c)**: Should be available to all applicants – not just those who qualify for debt intervention	Noted – check that this is clear.
NDCA	**88B(4)(d):** how would the NCR/NCT decide on the particular DC?	NCR to advise / Consumer to choose his own DC.
WC	**88B(4)(d):** Correct: ~~"~~(d) the debt intervention applicant qualifies for ~~the~~ debt intervention, the National	Amend.

	Credit Regulator must make a recommendation to the Tribunal for ~~the~~ debt intervention …"	
CBA	**S88B (5):** Where the National Credit Regulator rejects an application for debt intervention or the debt intervention applicant does not accept a referral by the NCR or the Tribunal as stipulated in S88D (1) (b), the National Credit Regulator must notify the approved credit bureaux so that the debt flag or status code relating to debt intervention is removed	Amend.
Black Sash	**S88B (5) (d):** The financial and budget training should be free	PC to consider.
WC	**88B(5):** Correct: —…~~t~~he National Credit Regulator rejects an application…"	Amend.
	-	
FRB	- The NCR should advise all affected credit providers of the outcome of the evaluation and provide reasons therefore within 48 hours from the conclusion of the evaluation. - The NCR should also inform all registered credit bureaux of the status of the debt intervention application in a prescribed manner and form within 48 hours from the conclusion of the evaluation. - The NCR should refer the debt intervention application to the NCT within 5 business days from the conclusion of the evaluation.	PC to consider – recommend amend.
Z King	- The consumer should also be kept up to date with progress	Amend.
Black Sash	- The current application procedure excludes the option to appeal a negative outcome.	Amend.

Clause 14 – Section 88C: Orders related to debt intervention

BASA LNBLA NCRF	Need timeframes	PC to consider.
BASA	The test and factors that the NCT should apply in considering and determining a debt intervention order must be prescribed and must include the test of over-indebtedness (S79 NCA). The NCR and NCT should further consider the factors a Magistrate must consider before granting an emolument attachment order in terms of the Courts of Law Amendment Act and as incorporated in the Magistrates' Court Act, section 55A.	PC to consider.
AMC BASA CGCSA DCASA Finbond FRB	**Audi:** It is not clear from the provisions of section 88C if a credit provider will be able to state his or her opposition against an application for debt intervention when the matter is heard by the Tribunal. Section 88E, which deals with applications for rehabilitation provides that the Tribunal must inform each affected credit provider and debt counsellor of an application for rehabilitation, but it does not appear to be the same for applications for debt intervention. This is directly in conflict with elementary rules of procedural fairness. It violates the right to a ~~f~~air public hearing" in section 34 of the Constitution, and	Recommend that this be specifically included so that it is clear.

LNBLA **Justice** **K Louw** **Summit** **NCRF** **StandardB** **TCRS** **Truworths** **Wonga**	the right to procedurally fair administrative action in section 33(1) of the Constitution. Summit – Credit provider should be given an opportunity to state their case with the application and any amendments. This should be to the NCR before the matter is referred to the NCT, where it then proceeds like an ex parte sequestration. StandardB - The credit providers must be entitled to make submissions to the NCR and then to the NCT before a determination by the NCT can be made. This determination by the NCT must be capable of being appealed to a competent High Court in South Africa.	
FRB	The affected credit providers must be served by the NCR with the referral to the NCT of the debt intervention application and be provided with at least 10 business days to place any further relevant facts (information and documents) and / or arguments (legal or otherwise) before the NCT in the form of affidavits. The NCR must inform all registered credit bureaux of the referral of the debt intervention application to the NCT within 48 hours of the referral taking place. - Also iro extension of the suspension, extinction etc	PC to consider – recommend amend.
Justice	~~(~~1) An application for ~~the~~ debt intervention may…"	Amend.
DTI	(1): Support the single member concept. It is recommend that any appeals against a single members judgement should be made to a full panel of three members.	Amend (add).
ADRA	88C(1) (~~w~~ithout further evidence being led") appears to contradict 88C(2) (~~a~~ny other relevant information")	No – (1) says ~~m~~ay" – i.e. NCT has the power to make a decision on paper.
DCASA **Finbond** **LNBLA** **StandardB** **Truworths**	(1): It is very likely that the Tribunal Member is not qualified or trained to conduct accurate financial assessments and calculations even if they have access to a system. These tasks should be conducted by a suitably qualified person who has access to required systems to conduct these financial assessments and calculations. StandardB: propose a 3 member panel + the decision must be appealable to the High Court	NCT to respond.
Finbond	(1) Especially that no right to lead evidence, this is unconstitutional	PC to consider.
Summit	(1) – Regulator to be capitalised	Amend.
WC	88C(1) – Correct —…~~a~~plication for ~~the~~ debt intervention may be…"	Amend.
Summit	88C(2): What factors should the NCT consider in rejecting an application?	NCT to respond.
NCRF **Truworths**	88C(2): Suggest the NCT must complete the process within 2 months	PC to consider – NCT to respond.
NT:	**88C(2)(a):** For clarity, it would be useful to understand in 88C(2)(a) on what basis would this decision	Amend (clarify).

	be made.	
NDCA	**88C(2)(b):** how would the NCR/NCT decide on the particular DC?	NCR to advise / Consumer to choose his own DC.
WC	**88C(2)(b):** Correct ~~…~~.with a voluntarily voluntary plan of debt re-arrangement…"	Amend.
Summit	**88C(2)(b) and (c):** The order in (b) should be subject to (c) – i.e. the order in (c) should be the preferred order.	PC to consider.
Justice	~~(~~2) *(c)* where the Tribunal is of the view that *the* debt intervention applicant…"	Amend.
BASA CGCSA	88C(2)(*c):* how the NCT will determine this? This paragraph can be removed as it is already catered for in debt review provisions	PC to consider – if a fund can be created, these provisions are superfluous.
DCASA Summit NCRF	**88C(2)(c):** How will Consumer be required to make payments? Suggest payments to occur via an accredited PDA. Who should monitor and check payments? When there is an unpaid or disputed payment who should contact the client? - An emolument attachment can also be done against the payslip of the consumer	PC to consider.
BASA NT:	**88C(2)(c)(i):** - For clarity, on what basis will this view be formed, is it in effect an affordability assessment? Could more guidance be given, e.g. that repayments not exceed 25% of individual (not household) income. - For clarity, what is being considered as grounds that debt counselling would not be effective?	Amend (clarify).
BASA NT:	**88C(2)(c)(i):** Not clear what ‗Provided that the maximum interest, fee or other charge may be zero' means – can there be no interest or other fees/charges? NCT should only be permitted to reduce the costs of credit relating to a credit agreement (as envisaged in section 101(1) of the NCA) and more specifically only service fees and interest rates (if the NCT reduces the cost of credit insurance, the credit provider would not be able to submit the full premium to the insurer and therefore the insurance would lapse to the detriment of the consumer.)	Amend – clarify.
BASA K Louw NCRF Truworths	**88C(2)(c)(i):** We propose that the 12 month suspension period be decreased to 6 months from a fairness and equitable perspective, to avoid the total potential suspension period being so long that it borders on prescription of debt, and to reduce the adverse effect of suspended credit agreements on the loan book value. Louw: 12 months is too long – it will have a negative effect on the credit industry	PC to consider.
TCRS	**88C(2)(c)** – the length of time that the whole debt intervention may take, could affect prescription. Failure to address the running of prescription may prejudice CPs	PC to consider – Recommend amendment to make it clear that prescription is interrupted / suspended.

BASA **DCASA** **NCRF** **Truworths**	**88C(2)(c)(i):** How will the obligation on the debt intervention applicant to refer his/her application back to the NCT for review work? Whose task is it to obtain, assess and submit information in time before the 12 months expire. The proposed 12 months review process is flawed, cumbersome and unpractical and may leave the Consumer in a worse positon if the annual review has not been completed. If the annual review has not been completed on time with the required assessment and recommendations this may open the door for Credit Providers to commence with enforcement actions. The Client‘s in the proposed bracket continuously change Cell phone numbers and service providers and will need to be contacted by the NCR at least 8 weeks prior to the 12 month period ending. What recourse would the credit provider have if he / she doesn‘t? It should include the right to immediately enforce the credit agreement if the consumer did not refer his/her application back within a prescribed timeframe and all debt relief afforded to fall away in its entirety. NCR should have an aftercare obligation throughout the lifespan of the debt intervention process, else the process will falter and the success rate thereof will be miniscule (ensure the debt intervention applicant adheres to the NCT‘s orders, makes the required payments, submits the debt intervention application for review etc)	PC to consider. NCR to assist with processes. Amend to clarify and include consequences for non-referral after the period.
DTI	**Sect 88C (2) (c) (i) and (ii):** the provisions are supported subject to the determination mentioned in sub-paragraph (i) and (ii) being made by the NCR and not the NCT.	This affects the role of the NCR and may have unintended consequences. Recommend that the NCR makes recommendations to the NCT who makes the decision.
Z King	88C(2)(c)(i): is the word _maximum‘ here not perhaps meant to be _minimum‘?	NCR to advise.
Summit	88C(2)(c)(ii): suggest the phrase read: ~~t~~he monthly instalment that the debt intervention applicant must pay”	Amend.
BASA **CGCSA** **Summit**	**Sect 88C(2)*(d):*** Section 55 relates to compliance notices. The continuous reference to section 55 in the proposed section is not clear as to how these fit into reckless lending, prohibited conduct and dereliction of required conduct.	NCR to provide correct wording.
WC	**88C(2)(d)(i):** Correct ~~…~~.a credit agreement reckless as contemplated in section 55 read with section 83…”	Amend.
BASA **Summit**	The proposed sections envisage the NCT making a declaration of reckless lending or unlawfulness or prohibited conduct, but the relief is not catered for. We propose that the relief should be aligned with the current relief permitted in the NCA; A finding of prohibited conduct will not impact the relevant	Amend - NCR to provide correct wording.

	individual credit agreement, it will rather impact the registrant. The current penalties for prohibited conduct is stipulated in section 150. The NCT can declare the conduct as prohibited ito s150(a), but cannot declare the agreement to be void. If decalred void – the credit provider can claim the goods back from the consumer (e.g. loan; goods)	
WC	88C(2)(e): Correct – ~~...~~.grant an order in accordance <u>with</u> subsections (3), (4) or (5) related to the debt intervention…"	Amend.
DCASA **Z King**	**(3):** In terms of the Bill an annual review over a three year period is proposed. Based on our experience this proposal is unpractical and may well lead to no Debt Intervention assistance received by the qualifying Consumer: i. Debt is limited to R50 000 based on income of R7500. Based on 36 month repayment agreement the Consumers will be required to repay approximately R2000 per month. If the Consumer applies in month one and makes no payment for 12 months the outstanding debt increases to R65 000 after 12 months, and R111 000 after 36 months if interest, fees and other charges have not been reduced. ii. Annual assessments of Consumers with an income less than R7500 per month is near impossible. They change jobs, telephone numbers and address very often and this alone will make it impossible to conduct annual reviews. iii. The cost of conducting annual reviews by the NCR and NCT may well exceed the Debt amount. iv. If an annual review is not possible, the lack of an annual review places the Consumer in a worse situation compared to the date of application. The debt has increased and the lack of payment will enable Credit Provider to commence legal enforcement proceedings. Recommend: Simplify the process to a once off application with defined results and period instead of an annual review process. This will place Consumers in a better position to receive the assistance when required.	PC to consider.
K Louw	Louw: 12 months is too long – it will have a negative effect on the credit industry	PC to consider.
Summit	88C(3): Need factors for the NCT to decide between ordering repayments and suspending	NCR NCT to assist with wording. Factors can be detailed in the Regulations.
Summit	88C(3)(a) and (b) appear to be duplicated -	Consider – check if can be worded better.
NDCA	**88C(3)(a):** The additional administrative burden being placed on the consumer; NCT and NCR by suspending for 12 months at a time is impractical	PC to consider.

NCRF	**88C(3):** What does ~~fi~~nancial circumstances" mean?	Amend – clarify.
DTI **CGCSA**	**Sect 88C(3)(b):** How will the NCT be able to do this without the NCR? - Must be referred to the NCR which will later refer to the NCT- before the 12 months.	Regulations? Or amend?
WC	**88C(3)(b):** Correct: ~~—~~..deem appropriate taking <u>into account</u> the financial circumstances of the debt intervention applicant…"	Amend.
FRB	The debt intervention applicant or the NCT should serve the application for the extension of the 12 months period on all affected credit providers. The NCT should inform all registered credit bureaux of this application for extension within 48 hours of receipt. The affected credit providers should be provided with at least 10 business days to place any further relevant facts (information and documents) and / or arguments (legal or otherwise) before the NCT in the form of affidavits.	PC to consider – recommend some amendments (notification and right to place information before the NCT).
BASA	**88C(3)*(c):*** This will unnecessarily delay the finalization of the overall debt intervention application. We propose that the consumer should first claim against his/her credit life insurance prior to applying for debt intervention, and that the outcome of the claims submitted then be provided to the NCR and thereafter the NCT as evidence. This will provide for an accurate assessment of whether the consumer qualifies for debt intervention and will decrease the impact of potential financial losses on credit providers who are prevented from enforcing any affected credit agreements due to the outstanding fulfilment of a claim by a consumer against a credit life insurance policy.	Proposal supported. Given the time frame to claim (3 months), this may be a good proposal to consider.
DCASA	**88C(3)*(c):*** How will the Tribunal know if Credit Insurance payments are up to date or any claim information or process in order to postpone the matter? None of the information is included in the proposed process and this will render the section useless.	PC to consider – See BASA proposal.
NCRF	**88C(3)*(c):*** It is not clear what is meant by credit insurance. Is this a reference to a product such as an income protector product?	NCR to assist with correct wording. This refers to credit insurance, as described in the NCA.
NCRF	**88C(3)(c):**: " … that any part of the credit agreement that qualifies for the credit insurance does not form part of the debt intervention order." What is meant by this?	NCR to assist with correct wording. Wording to be considered during drafting.
WC	**88C(3)(c):** Correct: ~~—~~..or such a period as the Tribunal <u>may</u> deem reasonable…"	Amend.
ADRA	**88C(4):** How would the NCT determine when the applicant's financial circumstances have ~~im~~proved	PC to consider.

DCASA	sufficiently" to justify an order releasing him / her from the debt intervention process. The lack of a defined process and qualified skills may cripple the NCT	
BASA	**88C(4):** We do not support the extinguishing of debt, however if proposed provision 88C(4) is retained, the extinguishing of debt should only be permitted after the extended period contemplated in proposed section 88C(3). The proposed section 88C(3)(a)(ii) should be deleted and the words "…during the period or…" in proposed section 88C(4) should be deleted. The extinguishing of debt should be an absolute last resort and option	PC to amend.
CBA	88(4) Iro extinguishing of debts – the effect of this on reporting and on systems of credit providers is that the agreement is dead. If it is extinguished in part, the credit provider has to enter into a new agreement	Amend.
MFSA	88C(4) Do not support extinguishing of debt – rather provide a grace period in which no fees or interest accumulate	PC to consider.
Summit	88C(4): What is the legal effect of extinguishing? Need a definition to avoid litigation - Is the debt or part thereof written off? - Will all or part of the force and effect of a credit agreement become unenforceable? - Can the credit provider claim restitution / unjustified enrichment? - Make it clear that the consumer will not be liable for any further payments to the credit provider or person to whom the debt was transferred - Reference to the credit agreement should be removed from the consumer's credit bureaux info	NCR / NCT to assist with wording Draft proposal "Extinguish means cease to be due and payable".
NCRF	88C(4): Once the debt intervention applicant has been referred to a debt counsellor then the provisions of section 86 relating debt review should apply. The NCT cannot declare credit agreements included in debt review as extinguished.	Amend – clarify which can be extinguished.
NDCA	88C(4): What incentive/reason would there be for the consumer to improve or inform that they improved their financial position?	PC to consider.
NDCA	88C(4): 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	PC to consider.
Truworths	88C(4): Limit the extinguishing to a maximum of 50%	PC To consider.
Truworths	88C(4): Changes to income tax (and possibly also VAT legislation) will be required to ensure that credit providers are entitled to a full and immediate income tax deduction (and input VAT relief) in respect of debts ordered by the Tribunal as extinguished. Currently income tax deductions for bad debts are as a rule not permitted by SARS, instead SARS at its discretion grants an allowance for such bad debts that requires credit providers to amortise such bad debts for tax purposes over a period of 3 years. Debts extinguished by order of the Tribunal should	Recommend PC consults with NT / SARS.

	be covered by a special new tax deduction to be inserted into tax legislation ensuring such deduction is equal to 100% of the debts extinguished, is not subject to SARS' discretion and is claimable in the year of assessment in which the extinguishment order is granted. An argument can be made for such new tax deduction to equal 125% of the debts extinguished, thereby ensuring the state contributes also to the drastic financial effects of debt extinguishment by foregoing tax revenue.	
Summit	88C(5): 88C(2)(d) should be included in (5)	NCR / NCT to advise.
Summit	88C(5): No guidance is given iro the type of conditions that can be set	NCT to advise – need clarity in the Bill as there are concerns this interferes with contractual freedom. Conditions related to execution of the order.
NCRF	88C(5): All conditions in (a) to (c) must be ordered (should not be discretionary)	PC to consider.
NT:	**88C(5)(a):** Propose that any order that changes repayment should be required to be communicated to the bureau.	Amend (add).
BASA	**88C(5)*(b):*** Exclusion from accessing further credit during and after (for a rehabilitation period) the debt intervention is very important. A period of 3 to 5 years is recommended, after the consumer has fulfilled the obligations the debt intervention measure placed on him / her	PC to consider.
Truworths	**88C(5)(b):** The words ~~-m~~ust not be less than 12 months but" should be inserted after the words ~~-s~~ubsection (5)(b). - Should a debt intervention application be successful, the debt intervention applicant's household must be in dire financial straits and have been so for some time. Accordingly, a period of at least 12 months should be required to pass before credit may be applied for again by the debt intervention applicant.	PC to consider.
DTI **NT**	**Sect 88C(5)*(d)*** Recommend the establishment of a specialized institution focusing on consumer education. Also recommend that financial literacy education be added into the basic education curriculae at schools. However, consider overlap with the National Consumer Financial Education Committee currently chaired by the National Treasury (new Financial Sector Conduct Authority).	Discuss with NT so that this can be coordinated and the Bill amended accordingly.
BASA	**Sect 88C(5)*(d)*:** Completion of a financial literacy and budgeting skills programme should be mandatory upon application for debt intervention – it must be completed <u>before</u> the person receives the debt intervention	PC to consider especially in light of NT's comments. BASA to explain why before?
WC	**88C(5)(d)** these should be free. Include wording to confirm that this training is free of charge	PC to consider.
WC	**88C(5)(e) –** The words ~~-b~~ecome a productive member of society" presupposes that indigent people are	Amend.

	not currently productive members of society. This is incorrect	
AMC	(7): The limitation on the period over which one may not apply for credit is ~~no~~ more than 36 months". Given the serious predicament of the consumer (that his or her debt must be extinguished) and the great cost to businesses, employment and the economy, a limitation of 36 months is absurd. The applicant is still able to pay up all amounts owed to be rehabilitated' as is the case for insolvency. At the absolute minimum, a period of 5 years should pass.	PC to consider benchmarking.
Black Sash	(7): the 36 months to be reduced to 24 months	PC to consider.
BASA	(7): the proposed section **88C(7)(e**) is excessively vague and must be clarified as it is unclear what type of behavior the debt intervention applicant must have displayed, how this will be accurately assessed, etc.	NCR / NCT to assist.
Summit	(7): From when must the 36 months be calculated?	Make this clear.
NCRF	(7): How was the 36 months period determined?	Indicate in memo on objects.
Truworths	(7): The words ~~or~~ security" should be deleted. The debt intervention process only applies to unsecured debt and accordingly security is not applicable.	NCR to advise – amend.
WC	(7)(b): Correct —.the number of credit agreements ~~that~~ submitted for debt intervention…"	Amend.
FRB NCRF	**(8):** The NCT should serve the order granted on all affected parties (specifically the debt intervention applicant, the NCR and the affected credit providers) and all registered credit bureaux within 48 hours of it being granted NCRF – within 24 hours	PC to consider – recommend amend.
FRB	**(8):** Also serve orders under (3) – (5) on credit providers and credit bureaux.	Amend.
Summit	**(8):** The NCR of all orders – change ~~s~~ubsection (2)" to ~~th~~is section".	Amend.
DTI	**88C(9)** We recommend that the process of rule nisi be included when considering debt intervention applications with all interested parties having the opportunity to make submissions on the return date, thus complying with the audi alteram partem rule.	Amend (clarify).
CGCSA NCRF	**88C(9):** This concept is very short on detail. Is this a right of appeal? How does that work practically if the credit provider is not a party to the original debt intervention application? Who will hear the matter? Will it be the same member of the NCT who first heard the matter or another member (or a full bench)? The credit provider should also have the right to appeal the reconsidered order to a higher court.	NCR / NCT to assist.
Summit	**88C(9) –** Add ~~in~~ the prescribed manner and form".	Amend.

SAIPA	SAIPA: It is our suggestion that the period for setting the application down for reconsideration should be prescribed.	
WC	**88C(9) –** The tribunal is functus officio and cannot hear this application. There should be an appeal process as is provided for in section 148 NCA	Consider and correct wording.
NDCA	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)?	PC to consider.
ADRA	**Process:** The outcome of such application must be subject to the normal rules and opportunity of review and/or appeal.	Amend to make it clear that the normal processes apply.
BASA	The working of section 103(5) (statutory in duplum) should be stayed for the period of the debt intervention (from date of application by the consumer to the NCR until the end of the process upon the rejection of the application or rehabilitation of the consumer) – i.e. interest should be allowed to exceed capital. This is paramount to prevent double debt relief being afforded the consumer and the credit provider being penalised twice	PC to consider.
K Louw	These provisions also do not adequately provide for instances where the debt might prescribe during such a suspension period and the Bill should deal with/clarify the issue of prescription.	Amend.
Black Sash	The current application procedure excludes the option to appeal a negative outcome.	Amend.

Clause 14: Section 88D: Effect of debt intervention

BASA	Consumers should be monitored by the NCR throughout the process to assist and determine a change in circumstances	Consumers to submit/attend a bi-annual review, failing which the debt intervention should lapse.
MFSA	Support a period of rehabilitation and this should include financial literacy education	Noted.
BASA	**88D(1),** ***(4):*** Exclusion from accessing further credit during and after (for a rehabilitation period) the debt intervention is very important.	PC to consider.
WC	88D(1) – Correct —…application for ~~the~~ debt intervention …"	Amend.
DCASA	**88D(1):** ~~–~~Consumer who has filed an application." This does not mean a successful application. No process to undo declined application Credit Bureau listing this will require NCR updating the Credit Bureaus if decline as stated in (i).	Amend.
NT:	**88D(1)(a):** Propose that this obligation be placed on the person setting the charges i.e. credit providers	Amend so that it is clear that

Z King	and debt collectors (including law firms) cannot impose additional fees on the applicant in relation to existing unsecured credit agreements. Debt Counsellors have found the use of the word ‗charges' in this sentence which is essentially copied from NCA Section 88, has caused a problem for the debt review process. The question is: Does the consumer go out and incur charges by trying to use the credit facility or is it the credit provider who adds charges to the consumer's credit facility? Also not all credit agreements are a credit ‗facility' and thus this does not cover all forms of credit.	neither consumer or CP may do this.
BASA	The consequences for non-adherence with section **88D(1)(a)** are not stipulated. We would propose that the debt intervention applicant should be prohibited from benefiting from debt intervention in its entirety, whether once-off or those debt interventions which may be prescribed by the Minister, to deter consumers from unacceptable moral and fraudulent behaviour. Credit providers should further also be permitted to proceed with the enforcement of the credit agreements impacted by the debt intervention, as is the current practice under debt review.	Amend – clarify.
WC	88D(1)(a)(ii) – this can be interpreted that the consumer may apply for credit again if one of the agreements under the application is declared reckless, regardless of the application proceeding on other agreements	Amend.
BASA	**88D(1)(b):** Section 88D(1)(b) is in conflict with section 88B and 88C in that it proposes that the debt intervention applicant be referred to a debt counsellor to assist with a voluntary plan of debt re-arrangement, section 88B and 88C however envisages the NCR facilitating this process.	Check and clarify.
NDCA	**88D(1)(b):** How will a DC be decided on?	NCR to advise/ Consumer to choose his own DC.
WC	**88D(1)(b)** Correct: ―.or assistance with a ~~voluntarily~~ voluntary plan of debt re-arrangement,…"	Amend.
DTI	**Sect 88D (1) (c)-** we support the clause, however the conditions to be complied with should not be prescriptive and rigid in nature. The consumer should be in a position to make input into the conditions so as to enhance compliance.	PC to consider.
BASA **DCASA**	**Section 88D(2):** We are of the view that the credit provider's enforcement rights should revive if: - the debt intervention applicant defaults or breaches any conditions or requirements of the debt intervention orders made by the NCT or recommendations made by the NCR; - the NCR or NCT or debt intervention applicant does not adhere to any timelines (which should be legislated and prescribed); - the NCR or NCT or debt intervention applicant does not adhere to any procedural requirements. Conversely - who will monitor unfair terminations or enforcement by Credit Providers?	PC to consider.
Z King	**Section 88D(2):** What if the NCR (and NCT) gets bogged down by so many applications they never get to hear the matter for a year or two? The credit provider might never be able to enforce collections	NCR to advise.

	on this consumer.	
Summit	**88D(2):** - What will constitute non acceptance? - Need a timeframe within which to accept or not	NCR to advise – amend- non acceptance will be an incomplete application- i.e. an application not supported by all required documentation. Timeframes will be detailed in the regulations.
Summit	**88D(2):** Make it clear that the credit provider can only enforce the part of the agreement that is not suspended iro 88C(2)(c) and 88C(3)	Amend.
NDCA	**88D(2)(c):** 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	NCR to advise on correct wording to avoid this interpretation.
BASA	**Section 88D(3):** This prohibition should be subject to the credit provider‘s right to take the matter on appeal or review or have the NCT‘s order or decision amended or rescinded. It is imperative that credit providers should have the right to make submissions.	Amend – clarify.
DCASA	**Section 88D(3):** How will the Tribunal know that the debt has been repaid? Will the NCR be responsible to manage end balance differences and obtaining paid up letters. The proposed administrative process will require qualified skills, processes and systems at the NCR. As stated above this function is not aligned for normal NCR functions. Failure to implement the required process at the NCR may lead to compromised Consumers who in terms of the proposed amendment has a right to apply for Debt Intervention which if not implemented correctly and timeously may result in non-implementation of Debt Intervention.	PC to consider. The NCR to perform all functions of a debt counsellor.
Summit	**88D(3):** Credit Provider should be able to enforce any security on the agreement	Amend.
NT **Z King**	**88D(4):** Propose that this obligation be placed on the person setting the charges i.e. credit providers and debt collectors (including law firms) cannot impose additional fees on the applicant in relation to existing unsecured credit agreements (+iro –further credit agreement”).	Amend so that it is clear that neither consumer or CP may do this.
K Louw	**88D(4):** A further area of concern is the consumer‘s right to apply for credit after a successful debt intervention was obtain. Of particular concern is that such a consumer may still apply for development credit (see proposed section 88D(5)). If a consumer is struggling to repay debt and credit providers are forced to write off debt, affected consumer should not be able to apply for any other credit irrespective of what type of credit he or she is applying for. This aspect should be reconsidered.	PC to consider.
NCRF	**88D(4): Amend** - (4) Subject to subsection (5), a debt intervention applicant who <u>has applied for or</u> was granted a debt intervention may not incur any further changes under a credit facility or enter into any further credit agreement with a credit provider for the <u>duration of the application process and</u> for the	This is already included in 88D(1).

	period during which the NCT's order contemplated in section 88C(2)(c) or (e) applies [our amendment]	
NDCA	**88D(5):** Debt intervention applicant should be a DC applicant and can not be granted developmental and/ or public interest credit	PC to consider – recommend aligning with existing processes.
NT	**88D(6)(a):** In practice, how will the applicant know to notify the NCR, amongst his or her other obligations? There may be an incentive to not communicate a positive change, unless it is made clear that he or she can possibly get access to more credit if reverse the order	Processes to be clarified with NCR.
WC	**88D(6)(a):** Correct ~~…~~.A debt intervention applicant must notify the National Credit Regulator of any change in his or her …"	Amend.
BASA	**Section 88D(6)(b):** We are of the view that the 60 days period is too long and should be shortened to 10 business days. Section 88D is devoid of timelines and does furthermore not envisage credit provider participation. The credit provider should be afforded the right to inform the NCR and/or the NCT of a change in the financial circumstances of the debt intervention applicant and request the change of the debt intervention recommendation or order. We propose that the NCR review the debt intervention applicant's financial position on an ongoing basis, every 6 months, to ensure the NCT's order is amended where circumstances so require.	PC to consider.
CGCSA	**88D(6):** Practically however which debt intervention applicant will report a positive change in their financial circumstances and how does the NCR intend to police all debt intervention applicants' financial circumstances?	Consumers to submit bi-annual review, failing which the debt intervention should lapse.
SAIPA	**88D(6):** It is our proposal that this subsection be applicable to any credit provider impacted by the debt intervention order should such a credit provider reasonably believes that the financial circumstances of the debt intervention applicant has improved.	PC to consider – recommend audi be included.
FRB **NCRF** **Truworths**	**(6)** Consumer must notify credit providers and NCR of a change within 5 business days and NCR to notify credit bureaux and affected credit providers within 48 hours of the notification NCRF: Within 10 days Truworths: Within 30 days	PC to consider – recommend audi be included.
NCRF	(6) What does ~~fi~~nancial circumstances" mean?	Amend to clarify
FRB **NCRF**	(6) NCR to consider submissions from credit providers when evaluating a change in circumstances and should finish the evaluation within 15 business days and must notify credit bureaux and credit providers within 48 hours of that completion NCRF: NCR must evaluate within 30 days	PC to consider – recommend audi be included.

DTI	**88D (7)** –is supported	
BASA	**88D(7)** – The consumer must formally undertake not to apply, enter or use any further credit for a specified time. If the consumer reneges on this undertaking, the consumer must be removed from the debt intervention process and the credit provider can continue to legally enforce the credit agreements.	Amend to clarify.
BASA **NCRF** **Truworths**	**Section 88D(7):** Add: ~~(~~7) The Tribunal ~~may~~ must rescind or change an order for the debt intervention— (c) if new financial information about the debt intervention applicant is submitted that justifies the change or rescission.”.	PC to consider – recommend it be included.
NCRF	(7) The credit provider must also be allowed to submit information showing that the applicant was dishonest etc	Amend – clarify.
Black Sash	**88D(7):** There should be a requirement for an investigation and a consumer that defaulted in good faith should not be impacted on	Amend (Audi).
Summit	**88D(7)(b)**: s88C(2)(c) should be included here	Amend
NCRF	**88D(7):** The debt intervention order should be suspended pending the outcome of the rescission	This would cause immense administrative problems for everyone involved. The matter should rather be finished within set time limits. The Credit Provider is not prejudiced by the slight delay as interest etc will again be applicable from the date of the initial application.
NCRF	**88D(7)(b):** How will the NCR ensure and monitor that the consumer is complying with conditions?	Consumers to submit bi-annual review, failing which the debt intervention should lapse.
WC	**88D(7)** – correct —…~~T~~the Tribunal may rescind or change an order for ~~the~~ debt intervention— (a) … applied for ~~the~~ debt intervention was dishonest …; or (b) …. was granted ~~a~~ debt intervention fails …”	Amend.
BASA	**New subsection** ~~(~~8) If a credit provider has allowed a debt intervention applicant to incur further charges under a credit facility or to conclude a new credit agreement, where the credit provider was not and could not reasonably have been aware of the debt intervention application or order, the credit provider‘s act or omission is not prohibited conduct and the credit agreement is not reckless lending.”.	PC to consider – recommend it be included.

BASA	**The following prohibitions should be included to prevent debt intervention applicants from becoming further indebted:** - the debt intervention applicant should be prohibited from applying for credit; - the debt intervention applicant should be prohibited from entering into incidental credit agreements; - the debt intervention applicant should be prohibited from applying or entering into any form of secured credit agreement; - the debt intervention applicant should be prohibited from applying or entering into developmental credit agreements. In the alternative, the debt intervention applicant should only be permitted to enter into educational loans as defined in section 1 of the NCA (which includes student and school loans); - the debt intervention applicant should be prohibited from manipulating the National Payment System rules and Card Scheme Rules (debit or credit card rules) to spend under the merchant's floor limit and increase his/her indebtedness; and - the debt intervention applicant should be prohibited from applying or entering into public interest credit agreements (an obligation must be placed on the NCR to educate consumers hereof).	PC to consider. - Further credit already prohibited - How do you avoid incidental credit?

Clause 14 – Section 88E: Application for rehabilitation

DTI: Support in general

BASA	**T**he requirements to obtain a rehabilitation order should be expanded upon to ensure that the consumer is truly financially rehabilitated, relating to his or her financial position and his or her financial behaviour and should include: - proof that a financial literacy and budgeting course has been completed and the relevant assessment passed; - proof of the applicant's liabilities; and - proof that the applicant's behaviour as it relates to credit has improved. It is imperative that credit providers are permitted to provide settlement letters or provide reasons why a settlement letter will not be provided, for example, in the event that the debt has not been settled.	PC to consider.
DCASA	Any application for rehabilitation sets in motion an administrative process at the NCR to validate payment, check end balance differences, compliance to Section 101 and 103(5) obtaining paid up letters and a fresh income and expenditure information. For this suitable qualified and registered Staff and systems will be required at the NCR. As stated above these tasks are not aligned with the purpose of the NCR. The proposed process is not practical nor complete.	A process similar to the issuance of a clearance certificate under the debt review process is to be considered?
DTI:	**(1) to (6)** Propose that the manner and timeframes be prescribed in regulations, thus deleting subsections (2) to (6).	PC to consider.
BASA	It is our respectful view that the debt intervention applicant may only apply for such an order if at least 48 months have expired since the applicant's application for debt intervention with the NCR. The debt	PC to consider.

	intervention applicant should further not be permitted to enter into agreements with credit providers to obtain rehabilitation.	
BASA **FRB**	Credit providers must be notified of the application and credit providers must be permitted to make submissions – within 48 hours - and oppose the relevant rehabilitation application. In this regard, the credit providers must be served with the complete rehabilitation application including all supporting documents and information. A debt intervention applicant should be required to apply for rehabilitation where debt was extinguished.	PC to consider – recommend that specific provision is made for the credit provider to be heard.
FRB	The NCR must notify credit providers when the application is referred to the NCT.	
NCRF	88E(1): The application should be directly to the NCT and the NCT should notify credit providers and credit bureaux	NCT to respond.
Summit	**88E(1) + (2)** - instead of saying ~~i~~ther order – the Bill can refer to 88C(2)(f)	Amend.
BASA **CGCSA** **NCRF**	**Section 88E(2)(a) and section 88E(2)(b):** The debt intervention applicant should be liable for the payment of the whole debt which was outstanding at the point of the debt intervention application and thereafter when the debt intervention application was granted by the NCT (all other costs of credit as listed in section 101 and section 102)	PC to consider.
NDCA	**88E(2)(a) and (b):** 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	PC to consider.
NCRF	**88E(2) and (3)(b):** Proof of payment is also not proof of settlement in full. This must be confirmed by the credit provider. Proof of payment could easily be fraudulent.	PC to consider.
BASA **Truworths**	**Section 88E(2)(a) and section 88E(2)(b):** ~~t~~he prescribed rate" should be replaced with ~~t~~he interest rate agreed in the credit agreement" or ~~t~~he interest rate as reduced by the NCT". The prescribed interest rate refers to the rate prescribed by the Prescribed Rate of Interest Act 55 of 1975 which could, if used incorrectly, lead to an incorrect legal interpretation.	Amend.
Z King	**Section 88E(2)(a) and section 88E(2)(b):** Credit provider calculations often differ from the simple calculations issued by the court order (of the NCT). For example the NCT order may say 10 months payments of R100 should settle the debt. The credit provider says that their calculations differ because of what days the payments were received and allocated and thus the consumer needs to pay for and extra month. Who is correct? Does the NCT court order change the original contract and override the credit provider calculations?	Amend – clarity.
Summit	**88E(2)(a) and (b):** Where the debt was extinguished ito 88C(4), 88E(2)(a) and (b) will not be applicable	No – the point is that a person can rehabilitate by paying despite the debt being extinguished. Need to

		make extinguishing's effects subject to this section.
NCRF	**88E(2)(b):** What is meant by —…an agreement with a relevant credit provider to the effect that the application has been fulfilled to the satisfaction of the credit provider"? Is this intended to mean a settlement letter or a consolidation loan? If so, this wording should be changed as the current wording is unclear.	Amend – clarify.
WC	**88E(2):** Correct: —…onthe date of the application for the debt intervention…"	Amend.
NDCA	**88E(3) and (4):** 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?	NCT / NCR to advise- perhaps a process similar to a clearance certificate under debt review can be considered? PC to consider criteria for rehabilitation.
BASA	**Section 88E(3)(d):** We recommend that section 88(3)(d) be amended to read: ~~a~~ set out of all the assets owned and liabilities by the debt intervention applicant; and …", thereby ensuring full disclosure of all information to be taken into account in respect of the application for a rehabilitation order.	PC to consider.
NCRF	**Section 88E(3)(d):** What does ~~S~~et out" mean?	Amend – clarify.
WC	**88E(3)(d)** – correct: —~~a~~setting out of all the assets owned by the debt intervention applicant	Amend.
BASA	**Section 88E(7)(b):** ~~a~~ccredited financial institutions" should read ~~a~~ccredited institutions"	Amend.
BASA **NDCA**	**Section 88E(7)(b):** The proposed provision should further state the criteria for accreditation to ensure the institution is fit and proper, should advise how these institutions will be funded (as consumers under debt intervention will not be able to pay the programme fees), and should prescribe the programme content to ensure that the consumer is correctly educated to bring about a change in behaviour.	See comments from NT re an institution.
BASA **CGCSA**	**Section 88E(7)(b):** We moreover propose that a consumer must attend and pass the assessment of the financial literacy programme prior to the final order being made. – A certificate from the institution must be submitted	PC to consider.
DTI:	**(7):** reference to the Minister should be replaced with the CEO (NCR)	Concern about constitutionality of this.
Summit	(7)(c): Suggest this is a stand-alone section with more details on the Minister's power to create these programmes and electing institutions	See NT's comment NCR / DTI to assist with wording.

BASA **CBA** **FRB**	**Section 88E(8):** The credit bureaux should be notified of the rehabilitation order, amendments to the debt intervention order and rescission of the debt intervention order, and the debt intervention register should be appropriately updated. – notification within 48 hours	Amend NCR / NCT to advise on timeframes- (timeframes to be detailed in the Regulations).
BASA	**Section 88E(8):** In the event the consumer repays and settles their debt in full, the credit bureaux indicator can be removed. In the event the consumer‘s debt was suspended, the indicator must remain on the credit bureaux for a further 12 months.	PC to consider.

Clause 14 – Section 88F: Debt intervention measures prescribed

Nedbank does not support the discharge of debt as it suggests to consumers that they can incur debt and then default

Justice	It is suggested that the heading of section 88F be amended to read as follows: ~~–~~**Debt intervention *measures* to be prescribed**” to distinguish it from the debt intervention provided for in the afore-going sections.	Amend.
NT **BASA** **CGCSA** **CPF** **DCASA** **FRB** **MFSA** **NCRF** **Nedbank**	NT does not support the measures set out in 88F (see policy document). Recommend that this clause be removed. It introduces future risk (unquantifiable), is vague and broad BASA: Constitutional concerns raised DCASA: May result in debt starvation to vulnerable consumers. NCRF: Concerned about the lack of public participation that would happen in Parliament	PC To consider.
BASA **CPF** **NCRF**	**Section 88F(2) and Section 88F(3):** We are of the respectful view that the categories of economic circumstances and consumers stated in these proposed sub-sections are broad and without clear definitions, it is therefore impossible for the credit industry to determine the possible impacts and consequences of these debt intervention regulations. It could make this section arbitrary as no clear guidance is given. No indication is given how the amounts given are arrived at, what ~~–in~~digent” means; the impact of the word ~~–in~~cludes”.	PC To consider.
WC	**88F(2)(a):** Correct: ~~–~~…constitute~~s~~ a significant exogenous shock ~~that~~ and which caused widespread job losses…”	Amend.
WC	**88F(2)(b):** Correct: ~~—~~…~~i~~nterest, ~~which was~~ identified…”	Amend.
BASA	**Section 88F(2)(b):** A formal declaration of a disaster area should be required before debt intervention regulations may be published	Amend – clarity.

BASA	**Section 88F(2)(c):** The Minister should be required to issue a report indicating all the alternatives to debt intervention considered and the reasons why same would not be efficient and effective prior to embarking on the path of potential debt intervention	PC to consider.
NCRF	**88F(2)(c) and (d):** Recommended that subclauses (c) and (d) contain a requirement that in each case, that as a result of the relevant hardship, they fall within the ambit of subclause (b).	PC to consider.
BASA	**Section 88F(3):** The debt intervention measures must be limited to unsecured credit agreements capped at a total outstanding amount of R 50 000, and as stated previously, the Minister should be required to consult with any other affected government department, regulator and minister.	PC to consider.
NCRF **Truworths**	**88F(3)** – the following agreements should be excluded from 88F - A developmental credit agreement contemplated in section 10; - 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 credit agreement; or - credit facilities in terms of which the credit provider provides goods to the consumer and the outstanding balance under the credit agreement is less than R2000;"	PC to consider.
Truworths	**88F(3)(c) and (d):** Add ~~i~~dentified by the Minister by notice in the Gazette"	PC to consider – recommend inclusion.
BASA **Truworths**	**Section 88F(3)(b):** The proposed provision should refer to ~~g~~ross" income per month of the household or joint ~~g~~ross" income per month, not just income per month.	PC to consider.
Summit	**88F(3):** Is income, per month, or 6 months average? The inclusion of women, minor etc is superfluous	Amend Remove – causes confusion.
K Louw	Although the objectives of proposed section 88F are laudable I would caution against the implementation of these proposals in their current format. I rather propose that their operation be limited. If this proposed measure is accepted and the Minister is permitted to prescribe such a measure, it should be limited to consumers who actually lost their jobs and remain unemployable for a long period of time.	PC to consider.
Summit	(4)(a): Does this include secured agreements?	PC to consider.
AGBIZ **BASA**	**(4)*(c)*:** It is irrational to extinguish debts by operation of law for something that is temporary eg a natural disaster. More rational and equitable relief would be rearranging / suspending repayment Such a remedy is far. Propose that sub clause (4) (c) be deleted	PC to consider.

NCRF **Truworths**	**88F(4):** debt intervention must still be a formal process requiring the person concerned to apply for debt intervention	Amend – clarify.
NCRF **Truworths**	**88F(4)(b):** Suspension should at most be for 6 months	PC to consider.
Truworths	**88F(4)(c) –** Extinguishing should be for a max of 50%	PC to consider.
NT: **BASA** **CGCSA** **NCRF** **Truworths**	(5) NT does not support 88F. Furthermore, the Financial Sector Regulation Act (FSRA) providing for increased cooperation and coordination and much stronger stakeholder engagement requirements in making regulations, which include producing an explanatory document, impact assessment and report on consultation, with a prescribed 6 weeks minimum consultation period. BASA: 8 weeks NCRF & Truworths: 60 business days	PC To consider.
WC	(5) – NA is used twice with reference to the Constitution. Rather define National Assembly in section 1	Amend.
BASA	(5)(d): the Minister should be required to issue regulations stipulating (i) the qualification criteria, (ii) the affordability criteria and (iii) the process requirements; the draft regulations should be aligned to and not impede the purposes of the NCA in section 3, and support the policies underlying the NCA.	PC To consider.
CPF	(5) As this refers to additional measures, is it necessary? If it does not fall in the other categories a normal legislative process needs to be followed anyway	PC to consider – was included to avoid any loopholes.
Summit	(5): Also advertised in relevant local newspapers, NCR website, shared with Trade Unions and any other avenue to inform majority of the public	PC To consider.
Truworths	88F(5)(c) and (e) – the permission of the NA must always be obtained	PC to consider.
Truworths	88F(5)(d)(ii) – amend: group of consumers who will qualify to apply for the measure	Amend.
BASA **CGCSA**	If retained, the Minister should be required to commission and obtain an impact assessment from a macro and micro economic perspective and also commission and obtain an assessment as to the impact of the proposed regulations on stakeholders such as consumers, credit providers, affected industries, etc. These impact assessments should be published with the draft regulations for public comments;	PC To consider.
BASA	If retained, the Minister should be required to consult with and obtain the approval of the Minister of Finance, the Minister of Justice, the NCR, The South African Reserve Bank, the Financial Sector Conduct Authority and the NCT before issuing these regulations. The process as envisaged in the Financial Services Regulation Act (Section 76) should be followed, which envisages the process of co-operation and collaboration between financial sector regulators and the SARB. A joint paper should therefore be presented to Parliament as opposed to merely a paper presented by the Minister of Trade and Industry;	PC To consider.

Clause 15 – section 89: Empowering the NCT to declare an agreement unlawful

BASA	We recommend that the NCT panel hearing a matter in relation to the credit agreement (whether this relates to unlawfulness or reckless lending) must consist of two or three members with recourse to an appeal or review after a decision is made.	1 member is only iro debt intervention measures.
K Louw StandardB	The power to declare credit agreements unlawful in terms of section 89 of the NCA, should be reserved for courts. Since the incorporation of the original NCA many more powers have been granted to the Tribunal and it is not in all instances desirable that a judicial power be granted to the Tribunal. Sometimes courts (i.e., magistrates and judges) are in a better position to make technical and complicated law decisions. One instance is for example where it must be decided whether or not an agreement is unlawful and to provide for the appropriate readdress in such an instance. A member of the Tribunal hearing a case, might not always have a law background as members of the Tribunal are not limited to lawyers.	PC to consider.
NCRF	(5) The NCT must not be given the power to declare credit agreements void. This falls within the ambit of the courts and should remain as such. Over many decades, precedent has been created and the common law interpreted on declaring agreements void. Such precedent must be followed. NCT orders do not take precedent into account.	NCT to respond.

Clause 16 – Section 90: Empowering the NCT to declare an agreement unlawful and sever an unlawful provision

BASA	We recommend that the NCT panel hearing a matter in relation to the credit agreement (whether this relates to unlawfulness or reckless lending) must consist of two or three members with recourse to an appeal or review after a decision is made.	1 member is only iro debt intervention measures.
K Louw	The power to declare credit agreements unlawful in terms of section 89 of the NCA, should be reserved for courts. Since the incorporation of the original NCA many more powers have been granted to the Tribunal and it is not in all instances desirable that a judicial power be granted to the Tribunal. Sometimes courts (i.e., magistrates and judges) are in a better position to make technical and complicated law decisions. One instance is for example where it must be decided whether or not an agreement is unlawful and to provide for the appropriate readdress in such an instance. A member of the Tribunal hearing a case, might not always have a law background as members of the Tribunal are not limited to lawyers.	PC to consider.
NCRF	(4) The NCT must not be given the power to declare credit agreements void. This falls within the ambit of the courts and should remain as such. Over many decades, precedent has been created and the common law interpreted on declaring agreements void. Such precedent must be followed. NCT orders do not take precedent into account.	NCT to respond.

New clause – section 100: Prohibited charges

IDC	Add to prohibited charges in subsection (2): ~~–A~~dditional interest, costs and finance charges on credit agreements included in debt intervention applications. after receiving a notice in terms of section 86(4)(b)(i);" and ~~–A~~dditional interest, costs and finance charges for a consumer on credit agreements included in a debt intervention applications order if when the consumer is not in default of the order."	Amend.

Clause 17 – Section 106: Credit Life Insurance made compulsory

NDCA	(a) : ~~–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?	This is already in the Act – dti / NCR to advise.
AGBIZ **AMC** **BASA** **DCASA** **NT (in consultation with FSB):** **LNBLA** **MFSA** **NCRF** **NDCA** **Nedbank** **TCRS**	**Concerns iro credit providers / insurers:** - Unless an insurer can be found, the consumer cannot be granted credit. - If insurers are to be compelled to provide specific types of cover rather than having a choice as to whether or not they wish to underwrite these risks, this is likely to have an impact on the risk based actuarial pricing assumptions of this cover. - Could knock small credit providers out of the market - Could increase cost of credit The introduction of mandatory credit life insurance in the manner proposed also means that it will no longer be possible for credit providers to choose to ~~–s~~elf-insure" against so-called ~~–n~~o fault" credit defaults by securing their own insurance cover against such risks.	Concern: These are unintended consequences. Recommend that this clause be deferred to **the dti** Bill so that further research can be done before this is legislated.
DCASA **MFSA** **TCRS**	**Concerns iro consumers** - The Consumer very often does not know if Credit Insurance is included or not and no process is included to obtain this information from the Credit Provider. - Qualifying Consumers are normally in arrears with payments when they apply and this means the Credit Insurance cover has been cancelled. - If excluded this means that Consumer is obligated to continue with contractual payment (including Credit Insurance) which they don't have	Concern: These are unintended consequences. Recommend that this clause be deferred to the dti Bill so that further research can be done before this is legislated.
BASA	Not all CPs are insurers - If the intention is to compel insurers to enter into credit life insurance	PC to consider.

NT: **Z Coetzer** **R Marais** **MFSA** **Nedbank**	policies, we respectfully submit that it is not appropriate for such a measure to be introduced through the National Credit Act, but rather through the Long-term and Short-term Insurance Acts or the Financial Sector Regulation Act	
NT:	Should all such policies include retrenchment benefits (where the consumer is employed) and, if retrenchment benefits are not provided (including in the case of unemployed consumers), is mandatory credit life cover for death and/or disability still a requirement?	If retained – make it clear which risks must be insured against.
Summit	Does this apply to secured and unsecured credit agreements?	PC to consider.
AMC **NT:**	**Questions**: - Which insurers would be required to provide this type of insurance? - What risks are to be insured against? Death, retrenchment, others (need to prescribe the types and combinations of benefits)? - Why iro 6 months+ ? shorter-term loans may incur massive fees/charges/penalties for non-payment	
BASA **CGCSA** **DTI** **NT** **Summit**	**(1A):** Change the terminology to say the credit provider must require the consumer to enter and maintain	If retained – amend the clause to make the intention clear.
DCASA	**(1A)** this Section will exclude short term debt which may make up a sizable portion of the Consumers debt which in the case of retrenchment will need to be repaid (often for periods exceeding 6 months. It is proposed and the definition be amended to include all unsecured debt.	PC to consider.
NT:	**106(2)(c)**: Already provided for in 106(2)(a), credit life insurance regulations and Policyholder Protection Rules issued under the insurance laws.	If retained – delete the sub-clause.
Liberty **NCRF** **Truworths**	It is imperative that the insurance industry is consulted with in respect of the proposed prescribed cost of credit life insurance granted in terms of s106(1A), as insurers may only underwrite actuarially sound policies. If the proposed maximum pricing caps are too low this could result in insurers not being able to underwrite this type of credit life insurance product, which in turn may result in the credit provider not being in a position to offer a credit agreement as set out in s 106(1A), which is turn could possibly lead to this market segment not being able to request loans	Min Finance will consult the industry. PC to consider risks highlighted.
NCRF **Truworths**	R50,000 is too high – R20,000 is more appropriate	PC to consider.
Truworths	Make it clear that this clause only applies to credit agreements concluded after this section 106A comes into effect."	Amend.

New Clause – Section 126B

Summit	Section 126B only prohibits the collection of prescribed debt if a consumer raises prescription as a defence or would have raised it. Thus, the collection of prescribed debt to which the Act applies is not prohibited in toto. It is suggested that section 126B be amended to exclude section 126B (b)(ii), prohibiting the collection on prescribed debt. Section 126B can rather make provision for instances where consumer specifically elects to make payments towards a prescribed debt	PC To consider. This also affects criminalising a contravention of this section – if it isn't clear in law what action is prohibited (if there can be a valid dispute), it should not be an offence.

Clause 18 – Section 129: requiring debt intervention to be taken into account when enforcing debt

BASA	In respect of the proposed amendment to section 129(4)(d), it is not clear when the NCT will order the enforcement of a credit agreement. In terms of the NCA a credit provider can only enforce a credit agreement in a court and not in the NCT	This comment does not read well. S129(4) deals with instances where the credit provider cannot enforce the agreement.
BASA	A court may further review a decision or order made by the NCT and we submit that the respective powers of a court and the NCT are becoming confused due to the numerous amendments and proposed amendments to the NCA. In some instances only a court has powers (enforcement of a credit agreement) and in some instances both a court and the NCT have powers (reckless lending and, in terms of this Bill, declaring a credit agreement void or declaring provisions of a credit agreement void) and sometimes only the NCT has powers (in terms of the Bill, to declare a debt extinguished);	In most instances both have powers. The appeal right remains. NCT to explain overlap with courts.
Summit	Suggest new amendment: ~~(~~1) If a consumer is in default under a credit agreement, the credit provider: (a) may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to the National Credit Regulator for debt intervention, or to a debt counsellor, alternative dispute resolution agent,…"	Amend.
BASA **CGCSA**	Section 88C(4)(a) makes provision for a percentage of the debt to be ~~e~~xtinguished". The proposed amendment does not make sense in those instances where only a percentage of the debt was extinguished as the remaining part of the debt can be re-instated or revived; and	Amend – clarify.
BASA **CGCSA**	**Section 129(4)(d)** seems to conflict with section 88C(2)(d), which does not oblige the NCT to declare a reckless agreement void, and section 83, which allows for various options, depending on the reason for recklessness. It is unclear if an agreement can be re-instated after it was declared reckless by the NCT, suspended and payments restructured [as per s83(3)(b)] and then thereafter the consumer pays the arrears in full;	Amend – clarify – NCR to assist with wording.
Summit	129(4) – Amend to include ~~e~~ourt or"	Amend.

Summit	129(4) – ~~V~~oid" may result in the credit provider claiming unjustified enrichment – need to make it clear what the consequences are of declaring an agreement void.	

Clause 19 – Section 130: requiring debt intervention to be taken into account during court procedures enforcing debt

BASA	The provision does not cater for the circumstances where the debt of the consumer is partially extinguished, thus the portion not extinguished may be revived or reinstated, or where a reckless agreement is not made void.	Amend.
	We recommend that this provision should be subject to the order or decision of the NCT being final, that is: - the order or decision was not taken on review; - the order or decision was not taken on appeal; - the order or decision is not subject to an application to have same amended or rescinded.	Amend.
Justice:	**130(4)(e):** The intro sentence reads: ~~(~~4) In any proceedings contemplated in this section, if the court determines that—". The Tribunal has already made an order and the court does not have to ~~d~~etermine" that an order has been made. It is suggested that consideration be given to put the proposed insertion in a separate provision	Amend.
Summit	130(4)(e)(ii): add —~~c~~ourt or"	Amend.
NCRF	The NCT must not be given the power to declare credit agreements void. This falls within the ambit of the courts and should remain as such. Over many decades, precedent has been created and the common law interpreted on declaring agreements void. Such precedent must be followed. NCT orders do not take precedent into account.	NCT to respond.

Clause 20 – Section 137: Providing for the NCR to refer debt intervention applications to the NCT

NDCA	Debt Counsellors should refer matters	PC to consider. NCT to advise.
BASA	We are of the view that a debt intervention application should be heard by two to three NCT members. This would prevent an apprehension of bias and conflict of interest	NCT to respond.
Justice:	Apart from the suggested amendment as indicated on the Bill, it is uncertain if the reference to section 88F is correct. Section 88F deals with debt intervention measures by the Minister. (1A) The National Credit Regulator *must* refer~~s~~ 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	Amend – clarify.

	accordance with section 88F."	
Summit	(1A): Amend: (1A) The National Credit Regulator may refers applications for the debt intervention, contemplated in section 88A, to the Tribunal, in the prescribed manner and form, in accordance with section 88B(4)*(d)*, or as may be prescribed in accordance with section 88F."	Amend.
NCRF	(1A) The NCR must refer applications	Consider drafting implications and amend if possible.

New Clause – section 140: Outcome of complaint

IDC	Add in (1): (c) make an application to the Tribunal if the complaint concerns a matter that the Tribunal may consider on application in terms of any provision of this Act, including disputes and prohibited conduct, or	NCR agrees with the comment.

New Clause – section 141: Referral to NCT

Add as (5): The Tribunal must refer matters related to an offence to the National Prosecuting Authority.	Consider.

Clause 21 – Section 142: Providing for the NCT to consider debt intervention applications and to do so with one member only

NDCA	Debt Counsellors should refer matters	PC to consider - NCT to advise.
BASA **Finbond** **LNBLA** **StandardB** **Truworths**	We are of the view that a debt intervention application should be heard by two to three NCT members. This would prevent an apprehension of bias and conflict of interest - the NCT should be entitled to consider further evidence. - credit providers must issue a certificate of balance; - credit providers must be afforded an opportunity to refute any allegations or to submit further evidence to refute allegations levelled by the NCR; and An appeal process is required	NCT to respond - Further evidence is not prohibited - Certificates can be given to the NCR - The NCR cannot make allegations. They can only present facts. NCT to assist iro appeals / review.
Justice:	**21*(a)*** Also see comments on section 88C re whether a credit provider could state his or her opposition against an application for debt intervention when the matter is heard by the Tribunal. The same concern applies here.	Recommend that this be included.

Justice:	***21(b)Is*** the reference to section 88F correct? Section 88F deals with debt intervention measures by the Minister.	Amend – clarify reason for including s88F.
CGCSA	**(3A):** This proposed new subsection is unnecessary given that it is already catered for in the new section 88C(1).	Amend if necessary.
WC	**(3A):** Correct: ~~..~~.~~The~~ A single member of the Tribunal may…"	Amend.
BASA	the NCT must be adequately capacitated to handle the influx of debt intervention applications and prevent backlogs from starting.	NCT to respond.

Clause 22 – Section 152: Providing for the orders of the NCT to be binding on Consumers and Credit Providers

CGCSA	Section 152 is necessary to bind, by legislation, certain bodies that are not necessarily party to the litigation before the Tribunal. It is therefore unnecessary for these proposed new subsections to be added; obviously the affected parties themselves who are before the Tribunal (namely the credit provider and the consumer) will be bound by the Tribunal's ruling;	Disagree – see opinion below.

New Clause – section 157: Hindring Administration of the Act

IDC	Add: (b) Any court or Tribunal must not grant a cost order against the debt counsellor acting within the ambit of the Act in any matter relating to debt intervention. (c) A credit provider charging additional interest and finance charges in breach of the contract, after a debt intervention order has been granted by a court or the Tribunal, is an offence. (d) Failure to expunge from a consumer's credit record debt intervention on behalf of a consumer by any registered credit bureau in terms of section 71 of this Act is an offence.	PC to consider.

Clause 23 – Section 157A: Offences related to debt intervention

BASA: Supports S157A

NT: **CGCSA** **K Louw** **MFSA** **NCRF** **NDCA**	Consider whether these should be offences; administrative sanctions may be easier to enforce. The Act envisages a system of administrative enforcement instead of criminal sanctions to ensure compliance, and established the NCR and the NCT to drive such enforcement.	PC to consider.
BASA	Consumers should be monitored by the NCR throughout the process to assist and determine a change in circumstances	NCR agrees with the comment.
DCASA	Conflict iro NCR's role: Who will be required to monitor Debt Interventions? It would appear that this function will be fulfilled by the NCR who may be compromised in cases were the Debt Intervention process was not implemented correctly by the NCR. It is proposed that suitable penalties for non-compliance by the NCR be included. Clarity is also required how charges be laid, prosecuted, who will define the charge sheet, time lines for the process and the right to defend and appeal.	PC to consider.
CGCSA	Both of the proposed new offences related to debt intervention in new section 157A are already covered in the listed offences in 160(2)(a) and (d) of the Act and therefore there is no need to add further unnecessary content and offences to the Act.	Amend if necessary.
Justice:	- The heading of the clause should refer to the insertion of sections 157A to 157D in Act 34 of 2005, and not only to section 157A: ~~In~~**sertion of section 157A *to 157D* in Act 34 of 2005**"	Amend heading of clause.
Justice: **WC**	~~(~~1) *Any person who* Intentionally ~~submitting~~ *submits* false information in an application for ~~the~~ debt intervention, or *who* ~~presenting~~ *presents* information in an application for ~~the~~ debt intervention in a manner that is intended to mislead the National Credit Regulator or Tribunal, is *guilty of* an offence."	Amend.
Justice:	It is suggested that the word ~~de~~liberately" in section 157A(2) be replaced with ~~in~~tentionally" to bring the provision in line with subsection (1) and to ensure legal certainty: ~~(~~2) Any person who ~~deliberately~~ *intentionally* alters his …~~—~~	Amend.
CPF	(2)- Is this not a duplication of (1)?	No.
WC	(2): Correct: —…o~~r~~der to qualify for ~~the~~ debt intervention…"	
CBA	We recommend the addition/insertion of S157A (3) as follows: *"Any person who provides information in regard to his or her assets, debts and liabilities in a credit application which are substantially different to those submitted in an application for debt intervention must be able to prove the reason for the difference in submissions, failing which such person may be found guilty of an offence*	PC to consider.
NCRF **Truworths**	The offence should be iro altering household income, not individual	Consequential amendment if the decision is to accept household

		income and expenses.

Clause 23 – Section 157B: Offences related to credit agreements generally (incl. continuing recovery etc iro prescribed debt)

AGBIZ **AMC** **BASA** **CGCSA** **NT** **K Louw** **NCRF** **StandardB**	Consider whether these should be offences; administrative sanctions may be easier to enforce. - Criminalisation of reckless lending may not be the most suitable option (burden of proof; delays). - Penalties already provided for in the Act: credit providers would be penalised more than once for the same contravention or for the same prohibited conduct. - Offences should relate to conduct which is intentional, willful and where the degree of judgement required is limited: reckless lending differs from company to company; unlawful provisions or agreements may be oversights; subsections (a) to (g) all refer to provisions that are a matter of judgment or potential oversight. This is not criminal behaviour.	PC to consider.
LNBLA **MFSA**	6.1. The Bill introduces general offences relating to credit agreements, including offences in relation to reckless lending. This is especially problematic, considering that our law is not settled on the criteria for reckless lending.	PC to consider – should this rather be held over for the dti's Bill?
BASA **Z Coetzer** **Nedbank**	Offences should be created for consumers who mislead credit providers in order to borrow money	This is already fraud.
Justice: **BASA** **Nedbank** **Truworths**	- ~~(~~1) A credit provider who *intentionally—* …respectively, ~~commits~~ *is guilty of* an offence."	Amend.
BASA	**Section 157B(1)(a):** Section 91 does not relate to marketing practices but rather relates to the concluding of credit agreements or supplementary agreements. A credit provider who contravenes section 74(2); 74(3) and 75(1) already faces the following consequences: - those listed in section 150; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void. We are therefore of the view that the creation of the criminal offence is not required. The consumer's interests are also appropriately protected.	PC to consider.
BASA	**Section 157B(1)(b): A** credit provider who contravenes section 75(2) already faces the following consequences: - those listed in section 150; and	PC to consider.

	- the relevant contractual provision is unlawful and void. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected.	
BASA	**Section 157B(1)(c):** A credit provider who contravenes section 75(3) already faces the following consequences: - those listed in section 150; and - the relevant contractual provision is unlawful and void. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected.	PC to consider.
BASA **NDCA**	**Section 157B(1)(d):** A credit provider who contravenes section 81(3) already faces the following consequences: - those listed in section 150; and - those listed in section 83 after a finding of reckless lending. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected.	PC to consider.
BASA	**Section 157B(1)(e):** A credit provider who contravenes section 89(2) already faces the following consequences: - those listed in section 150; and - the entire credit agreement may be declared unlawful and void. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected	PC to consider.
BASA	**Section 157B(1)(f):** A credit provider who contravenes section 90 already faces the following consequences: - those listed in section 150; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected.	PC to consider.
BASA	**Section 157B(1)(g):** A credit provider who contravenes section 106(2) already faces the consequences listed in section 150. We are therefore of the view that the creation of the criminal offence is not required. The consumer‘s interests are also appropriately protected.	PC to consider.
Justice:	~~(~~2) Any person who *intentionally* sells a debt under a credit agreement to which this Act applies and	Amend.

Nedbank	that has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969) as contemplated by section 126B(1)*(a)*, ~~commits~~ *is guilty of* an offence."	
ADRA **BASA**	(2): Criminalising such a transgression and the proposed sanction are both disproportionate to the interests The Bill seek to protect. Credit Providers may become hesitant to claim debt, amounting to a constructive infringement upon the constitutional right of access to court or conversely to more aggressive legal action The credit consumer is not prejudiced by lapse of time in the preparation and presentation of his/her defence, if any. From extensive experience it is however clear that in the vast majority of matters that do prescribe, the main contributing factor is the mala fide conduct of the credit consumer. This appears to be an example of over-criminalisation - the use of criminalisation as a blunt instrument to control debt collection. A credit provider who contravenes section 126B already face the following consequences: - those listed in section 150; and - the debt has been extinguished by prescription and can no longer be collected. We are therefore of the view that the creation of the criminal offence is not required. The consumer's interests are also appropriately protected.	Pc to consider the proposal by NT to change this into an administrative offence. Also, PC to consider that there may be a dispute iro prescription – many factors interrupt prescription, so it does not have a clear cut-off date. Propose that this be deferred to **the dti** Bill for further research.
Summit	Section 126B only prohibits the collection of prescribed debt if a consumer raises prescription as a defence or would have raised it. Thus, the collection of prescribed debt to which the Act applies is not prohibited in toto. It is suggested that section 126B be amended to exclude section 126B(b)(ii), prohibiting the collection on prescribed debt. Section 126B can rather make provision for instances where consumer specifically elects to make payments towards a prescribed debt	This also affects criminalising a contravention of this section – if it isn't clear in law what action is prohibited (if there can be a valid dispute), it should not be an offence.
TCRS	(2) and (3): Recommend these be deleted as the law on section 126 is not sufficiently developed yet.	This also affects criminalising a contravention of this section – if it isn't clear in law what action is prohibited (if there can be a valid dispute), it should not be an offence.
Justice: **Nedbank**	~~(~~3) Any person who *intentionally* 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~~ *is guilty of* an offence."	Amend.
Z Klng	(3) Perhaps some clarity can be added in this section that specifically mentions prescribed debt since this type of debt cannot be re-activated' ever. The phrasing here may give rise to some confusion in this regard.	Amend – clarity.
BASA	A credit provider who contravenes section 126B already face the following consequences:	Pc to consider the proposal by NT

	- those listed in section 150; and - the debt has been extinguished by prescription and can no longer be collected. We are therefore of the view that the creation of the criminal offence is not required. The consumer's interests are also appropriately protected.	to change this into an administrative offence. Also, PC to consider that there may be a dispute iro prescription – many factors interrupt prescription, so it does not have a clear cut-off date. Propose that this be deferred to the dti Bill for further research.

Clause 23 – Section 157C: Offences related to registration

NT: **CGCSA** **K Louw** **NCRF**	Consider whether these should be offences; administrative sanctions may be easier to enforce.	PC to consider.
BASA	**Section 157C:** We are comfortable with the proposed amendment. However, there may be unintended consequences iro when a person has to register. We expressed our concerns relating to the unintended consequences which would flow from the lowering of the threshold to R 0 - A natural person may have to register as a credit provider merely because the natural person entered into an isolated single credit agreement; This should only be applicable to credit providers that conduct a credit granting business.	PC to consider.
Justice:	~~(~~1) Any person who *intentionally* gives him or herself out as~~——~~ ~~—~~.section 134A, ~~commits~~ *is guilty of* an offence."	Amend.
Z King	(1): the term ~~h~~olds himself or herself out to be" rather be used than gives him or herself out as'?	Amend.
Summit	(1)(f): NCA does not provide for any formal procedure for conciliation or mediation or arbitration – any person who assists a consumer with assistance to resolve a credit dispute may be regarded as an ADR – including attorneys. A clearer definition of an ADR is required	Propose this is removed from the Bill and left for the dti's Bill to consider how to make the Act clearer before this non-registration is regarded as an offence.
NCRF **SAIPA**	157C(2): Subsection (a) should be amplified by including the requirement that such credit providers' applications for registration are not only received, but also approved within a certain period of the	We propose an addition as follows ~~t~~his section does not apply to a

	submission of the application. Otherwise this section will not have any effect on unregistered credit providers as they would be allowed to enter into credit agreements despite having an application for registration which is later rejected.	credit provider if 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.

Clause 23 – Section 157D: Offences by companies

NT: **CGCSA**	Consider whether these should be offences; administrative sanctions may be easier to enforce.	PC to consider.
NDCA	Applicable if DC industry is professionalized by allowing companies (as well as individuals) to register as debt counsellors	Applicable to CPs.
Justice:	Further punitive measures which could be considered against companies are found in section 11(4) of the Prevention and Combating of Trafficking in Persons Act, 2013 (Act No. 7 of 2013) (TIP Act) which provides that a finding by a court that an employer or principal has contravened the sections dealing with offences in the TIP Act (sections 4, 5, 6, 7, 8, 9(1) or 10) serves as a ground for the revocation or cancellation of any licence or registration that the employer or principal may require in order to conduct its business. It further provides that the finding must be forwarded to the South African authority that granted the licence or registration of the finding. The authority that granted the licence or registration may review the licence or registration and, where necessary, revoke or cancel the licence or registration.	PC to consider.
BASA	We are concerned about the use of the word –prescribed officer" because - the definition in the Companies Act 71 of 2008 has vague terms (general executive control") - Section 161 of the NCA does not refer to Section 157D and does not stipulate the maximum fine amount for this scenario; - Although the intent of the provision is understood, consequences may include reputational damage to a credit provider to the extent that the company's shareholders withdraw, suspension of the executive committees and directors of a company may lead to a management crisis at the credit provider, retrenchment and job losses.	This should perhaps be deferred to the DTI Bill for further research.
Finbond	With the term –company" not being defined in section 1 to the NCA it is unclear whether the scope of this proposed section will be extended to include for instance directors or prescribed officers of entities such as Mutual Banks or other corporate entities which are not companies in the general grammatical sense of the word. My understanding is that this must be interpreted to limit the scope of this section to directors and prescribed officers of companies only, for if it was the legislator's intent to extend the scope it would have done so.	NCR to advise –amend for the definition to included directors and prescribed officers of entities such as Mutual banks or other corporate entities.

LNBLA	It goes against the principles of company law to find directors and prescribed officers personally guilty of an offence when acting in their capacity as directors of a company.	The clause comes from the Companies Act.
NCRF Truworths	Change ~~k~~nowingly" to ~~in~~tentionally"	Consider a definition for ~~k~~nowingly" or amend.
StandardB	Propose that this clause be removed	PC to consider.

Clause 24 – Section 161: Penalties

Justice: NDCA	Currently, a person who contravenes or fails to comply with an order of the Tribunal is liable to a fine or to imprisonment not exceeding 10 years or to both a fine and imprisonment and in any other case, to a fine or imprisonment not exceeding 12 months or to both a fine and imprisonment. The proposed penalties appear to be very harsh and not in proportion with the nature of the offences set out in sections 157A – C. In comparison section 33(2) of the Legal Practice Act, 2014, provides that no person other than a legal practitioner may hold himself or herself out as a legal practitioner or make any representation or use any type or description indicating or implying that he or she is a legal practitioner. The penalty for this contravention is a fine or imprisonment for a period not exceeding two years or both a fine and imprisonment. It is appreciated that punishment should be appropriate and should act as a deterrent to curb the abuse of vulnerable people in society and the abuse of financial and court systems. However, the constitutional requirement of proportionality of the sentence to the offence, as also set out in various court judgments, should be taken into account. It is therefore suggested that benchmarking be done to bring the penalties in line with similar provisions in other legislation.	Recommend that the penalties again be discussed and either confirmed or amended in line with these proposals.
BASA	Superfluous as it deviates from the objects of the Bill	Amend objects memo if necessary.
BASA	**Section 161(1):** It is not clear what is meant by ~~p~~erson is not a natural person" in section 161(Ab). It is unclear whether the definition of the term ~~j~~uristic person" as envisaged by section 1 of the NCA will be applied or whether the common law meaning of natural person must be applied.	The common law meaning of natural person must be applied. For further clarity, this can also be amended to reflect the reference to 157D.
BASA	**Section 161(1):** The proposed section 161(1)(a) and 161(1)(aA) does not stipulate a maximum fine amounts. This is irregular and needs to be amended to include the computation thereof.	The formulation is accepted drafting style.
BASA NCRF	**Subsection 161(4):** The authority of the Magistrates' Court is already contained in Section 162. Further, the proposed wording may lead to unintended consequences so that Magistrates' Court would be able to award penalties for late renewal of registration by a registrant (which is actually within the authority of the NCR).	Agree – delete.

Clause 25 – Section 164: Providing iro civil jurisdiction for the Tribunal to declare an agreement unlawful

BASA	We recommend that the NCT panel hearing a matter in relation to the credit agreement (whether this relates to unlawfulness or reckless lending) must consist of two or three members with recourse to an appeal or review after a decision is made.	1 member is only iro debt intervention measures.
NCRF	Who will be responsible for costs if an appeal / review has to be lodged and the Credit Provider wins?	NCT to respond.

Clause 26 – Section 165: Changing the word "vary" to "change" (iro the NCT being able to change its decisions) and empowering the NCT to rescind orders

BASA	Subsection (2) can be combined into subsection (1) and a timeframe must be added within which the order can be varied	PC to consider.
NDCA	a. It is interesting that the word ~~-v~~ary" is proposed to be replaced by the word ~~-c~~hange". 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 ~~-v~~aried" under very specific circumstances.	PC to consider. NCT to advise.
NDCA	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 ~~-c~~hanged or rescinded" if a consumer is not adhering to his or her side of the bargain and not paying?	NCT to advise.

New clause – section 170: Credit provider to keep records

IDC	(1) A credit provider must maintain records of all applications for credit, credit agreements and credit accounts in the prescribed manner and form and for the prescribed time. (2) Upon receipt of a notice contemplated in section 86(4) a credit provider must update the credit bureau records of the consumer with the Total Balance Outstanding remaining under a contract for consumers requiring debt intervention and update it regularly.	Consider.

Clause 27 – Section 171 – Re regulations being required for a financial literacy programme

NT:	**171(bA):** There may be a risk of duplication and confusion with the mandate of the future Financial Sector Conduct Authority under section 57(b)(ii) of the Financial Sector Regulation Act of ~~p~~providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions" and with its function under section 58(1)(j) of that Act to "formulate and implement strategies and programs for financial education for the general public." As mentioned above, it is proposed that overlap with National Financial Consumer Education Committee be considered and efforts coordinated to avoid duplication.	Discuss with NT so that this can be coordinated and the Bill amended accordingly.
NDCA	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 ~~p~~re-approved" programmes, get a certificate, and then use that certificate to demonstrate their financial literacy has improved.	Firstly we recommend the establishment of a specialized institution focusing on consumer education. Secondly we also recommend that financial literacy education be added into the basic education curricula at schools.
BASA	- the institutions that offer the relevant programme should be accredited and audited on a regular basis to ensure that the necessary quality and content are provided; - the programme should culminate in an assessment which the consumer should pass.	PC to consider – see NT's comments
IDC	Add: (viii) prescribe the subsidy to be paid to debt counsellors by the national Credit Regulator for low income consumers debt intervention applications (ix) prescribe the debt intervention fees for debt counsellors (x) prescribe the fees for debt counsellors for reckless credit applications (xi) incentives for employers and credit providers who offer awareness and development programs to consumers and employees	Dependent on the final process opted for – amend.

Clause 28 – Long title amended to include debt intervention

BASA	Support the link in the proposed long title to the NCA which links the remedy of debt intervention with over-indebtedness.	PC to consider.
BASA	the reference to ~~a~~greement" or ~~a~~greements" be amended to read ~~c~~redit agreement" or ~~c~~redit agreements"	Amend.
IDC	to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting;	

	to provide for debt intervention which includes debt re-organisation in cases of over-indebtedness; to regulate credit information; to provide for registration of credit bureaux, credit providers and debt intervention services; to establish national norms and standards relating to consumer credit; to promote a consistent enforcement framework relating to consumer credit; to Incentivise awareness, development and training programs in the credit market, to establish the National Credit Regulator and the National Consumer Tribunal; to repeal the Usury Act, 1968,	Amend. PC to consider Amend.

New clause: Transitional provisions

AMC **BASA** **CBA** **FRB** **LNBLA**	The Affordability Assessment Regulations were immediately enforceable when they were released, which caused a great deal of uncertainty and distress, despite calls from all businesses for an implementation period of 12 months. This can be avoided by having an extensive implementation period which will help reduce the uncertainty that business faces. Estimated a period of 18 months is necessary to establish internal debt intervention staff and systems, enhancing existing systems, changes to the banks' bad debt provisioning models and systems - Diective7 and IFRS9 implications, training, credit bureaux systems	The CBA and credit providers indicated that the measure, reporting etc would require new systems. The once off measure is time sensitive, but the PC could consider removing the cut-off for debt date in section 88A(2) and allowing the Minister to prescribe a date, or to making the measure a longer term measure: both options can then be made operational at a later date. Alternatively, transitional provisions must be considered but finding an alternative for the absence of systems is not easy to address in a transitional clause.
NCRF **SACCRA**	**Systems**: Significant and complex system changes will need to be developed and implemented by credit providers, the South African Credit and Risk Reporting Association (SACRRA), credit bureaux and data providers to accommodate the debt intervention flag(s) to be held at the credit bureaux. The return of data from credit bureaus to credit providers where credit providers are making enquiries to assess consumers for credit applications, would need to be revised to include the indicators of each stage of the debt relief intervention applicable to each consumer. To this purpose, the return strings, i.e. data flowing from credit bureaus to credit providers, will need to be redeveloped as these are customized to the various credit providers' IT systems and automated credit and risk-decision mechanisms within the credit providers' environments. It would be complex and lengthy to affect these changes, hence attention is being called to this aspect, which will affect the ability of credit providers to see what state the consumers' credit standing are at.	PC To consider.

Clause 29 Short title and commencement

Memo on objects

NT:	It is proposed that the Portfolio Committee considers stating its guiding principles that inform the Bill, for example: • Existing measures to relieve debt pressures should be exhausted before turning to debt extinguishment; • If a person can pay, he or she should pay (unless the loan was granted recklessly); • Relief interventions are a last and necessary resort - NCA and NCR are the first line of defense, promoting responsible lending and promoting secured over unsecured lending (especially for homes); • Relief interventions should promote responsible borrowing, including changing behaviour, promoting borrowing for capital growth rather than consumption and within affordable and sustainable limits; • Relief interventions should mitigate moral hazard on both sides of the credit transaction; • Extinguishing of debt should only apply to unsecured loans, with the focus on no or low income borrowers (those groups who cannot afford debt review); • Borrower assets should be reasonably protected; selling assets should be absolute last resort, and where done should be done fairly and with dignity; • A cooperative and well-coordinated response is preferred, to be a shared responsibility across government, bank and non-bank credit providers, debt collectors and debt counsellors; and A comprehensive impact assessment is preferred in support of evidenced-based policy and regulation.	Amend.
Justice:	The paragraph in the objects memorandum (paragraph 3.19) does not speak to the proposed amendment in section 130(4)(e).	Amend.
K Louw	In the memorandum under paragraph 5 it is stated that various government organisations were consulted and these are comprehensively listed. However, when it comes to the credit industry,	Amend.

	particularly credit providers, it appears vague as to who indeed were consulted. It simply ambiguously states that ―Financial Houses" and ―Retailers who lend money" were consulted. For instance, it is not stated if the Banking Association of South Africa or the MicroFinance South Africa (MFSA) were consulted. I also do not see any other interested parties listed who were consulted. The proposed piece of legislation is very important and will have adverse and far-reaching consequences and in my view broader consultation is definitely required.	

Mandate:

- **Justice**: The Bill deals with matters which fall within the ambit of the trade and industry sector. The main feature of the Bill is the introduction of debt intervention, which appears to be the suspension of qualifying credit agreements for a certain time period. Duties and powers are assigned to the National Credit Regulator (NCR) and the National Consumer Tribunal (Tribunal) in dealing with applications for debt interventions.

Support for the Bill

- **The dti:** the dti, NCR and NCT are of the view that this Bill should be supported rather that inhibited noting the need and impact it is to have on the financially distressed consumers

Way forward

- **The dti:** We recommend that the drafters from the relevant agencies of the dti to convene a task team- to make technical inputs into the crafting the Bill in order to align them to the policy position. the dti, NCR, NCT support the Bill in its entirety, issues of drafting and Socio-Economic Impact Assessment studies will be enhanced through the public comment.

- **NT, WC:** Although Parliament is not subject to the requirements of SEIAS and the full NEDLAC process, we respectfully encourage the Portfolio Committee to demonstrate Parliament's commitment to best practice policy implementation and consider following these processes for this Bill, to ensure thorough analysis and stakeholder engagement. Research into which consumers are most impacted is only one piece of the puzzle. Additional research is required to determine the impact on structure, employment, profitability and sustainability of the banking and retail sectors, tax collection and the economy. Propose: An inter-departmental impact assessment (NT, dti, Dept Justice), which could be reviewed as in the existing SEIAS process by the Department Planning, Monitoring and Evaluation.