

Policy decisions to be made – National Credit Amendment Bill

Main policy decisions

Question	Decision
Clause 14: Should the measure be available to all persons who can apply for a debt review? (including considering joint estates, household income, joint debt)	
Clause 14: Should the measure only be available to persons who are over-indebted?	
Clause 14: Should the measure be a new process (as is currently in the Bill), or should the debt review system be used to give effect to the measure?	
Clause 14: If using existing measures, how is access to debt review ensured (costs)?	
Clause 14: Should assets be a factor?	
Clause 14: Should the measure be once off?	
Clause 14: If the measure is to be continuously available, how many times should a consumer be able to apply?	
Clause 14: Should the measure be available retrospectively?	
Clause 14: Should the role of credit providers be implied, or explicit?	
Clause 14: Should a single NCT member be able to consider suspension / extinguishing?	
<p>Clause 14: Should the NCT's decision be rigid, or in with a discretion?</p> <p>If a discretion, should the reference to “disabled person, a minor heading a household, or a woman heading a household” rather be included here as a group iro whom the NCT must give careful consideration to?</p>	
Clause 14: Period for which the right of the consumer to apply for credit could be limited (rehabilitation period)	
Clause 14: What should the period of suspension be?	
<p>Clause 14: Should prescription be postponed when the agreement is suspended?</p> <p>Hand in hand with this question is the question on what “extinguishing”</p>	

means. Currently it means no further claims – all obligations or rights are severed. Is this correct?	
Clause 14: If the NCT is of the view that a consumer is abusing the measure and decides not to extinguish the debt, what should happen to the consumer?	
Clause 14: Should section 88F – prescribed measures – be retained?	
Clause 11: Reckless lending: Should reporting by Credit Providers be retained?	
Clause 11: Reckless lending: Should reporting by Debt Counsellors be retained?	
Clause 13: Should Debt Counsellors be required to always check credit agreements for reckless lending, or only if a consumer requests?	
Clause 11: Reckless lending: Should suspension by the NCR be retained?	
New clause: Reckless lending: Should the different interpretations in courts of section 83 be addressed in this Bill?	
New clause: Reckless lending: Should referrals to the NCR / NCT from Debt Collectors be included in this Bill?	
Clause 17: Credit Life insurance – Should a clause be included to make it clear that this section could come into operation at a later date?	
Clause 17: Credit Life insurance – What risks should be insured against?	

Other decisions

Question	Decision
New clause: Should definitions for debt intervention”; “prohibited conduct”; “total outstanding balance”; “unsecured debt” be included?	
Clause 2: Should incidental credit agreements be included?	
Clause 3: Should stokvels, trusts and sole proprietors be excluded?	
Clause 12: Should courts— - give the consumer an option to participate in the debt intervention measure?	

- be able to grant the debt intervention?	
Clause 14 – rehabilitation: Should all outstanding debt be repaid? How will the debt be calculated – as from the date of application, or as if suspension / extinguishing never happened? What is the best midway solution?	
Clause 14 - What current financial literacy and budget training is available?	
Clause 15, 16: Should the power to declare credit agreements unlawful in terms of section 89 of the NCA, be reserved for courts	
Clause 23: Offences - Should all the offences be retained, or should some / all rather be subject to administrative enforcement with administrative sanctions?	
Clause 24: Penalties: Are the penalties too harsh?	

Offences and penalties (NCR / NCT to confirm the current penalties)

Offence	Section that requires compliance	Current “penalty”	Proposed penalty	Decision
- 157A(1) Submitting false information or intending to mislead the NCR / NCT on an application for debt intervention	New S88	None – new section	A fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment; and	
- 157A(2) Deliberately altering your financial circumstances in order to qualify for debt intervention	New S88		A permanent prohibition on applying for a debt intervention	
157B(1) A credit provider who (a) participates in an unlawful credit marketing practice... commits an offence	section 74(2) and (3), 75(1) or section 91 Section 91 (remove – refers to section 90 – included later)	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void.	fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater	
157B(1) A credit provider who	section 75(2)	- section 150 orders of the	fine or imprisonment not	

(b) does not comply with the limitations to entering into a credit agreement at a private dwelling ... commits an offence;		NCT; - the relevant contractual provision is unlawful and void;	exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater	
157B(1) A credit provider who (c) does not comply with the limitations related to visiting or entering into a credit agreement at a person's place of employment ... commits an offence	section 75(3)	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void;	fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater	
157B(1) A credit provider who (d) enter(s) into a reckless credit agreement with a prospective consumer commits an offence	section 81(3) Concern: Determination of reckless lending is very uncertain – Recommend that this not be an offence	- section 150 orders of the NCT; - section 83 declaration of reckless credit agreement (may set aside all obligations; suspend agreement; restructure consumer's obligations;	fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater	
157B(1) A credit provider who (e) enters into an unlawful agreement ... commits an offence	section 89(2)	- section 150 orders of the NCT; - the entire credit agreement may be declared unlawful and void.	fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater	

<p>157B(1) A credit provider who (f) includes an unlawful provision ... commits an offence</p>	<p>section 90</p>	<ul style="list-style-type: none"> - section 150 orders of the NCT; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void. 	<p>fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater</p>	
<p>157B(1) A credit provider who (g) offers or demands that a consumer purchases or maintains insurance that is unreasonable, at an unreasonable cost, or is to cover a risk that reasonably cannot arise in respect of that consumer... commits an offence</p>	<p>section 106(2)(a), (b) or (c)</p>	<ul style="list-style-type: none"> - section 150 orders of the NCT; 	<p>fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater</p>	
<p>157B(2) Any person who sells a debt under a credit agreement to which this Act applies and that has been extinguished by prescription ... commits an offence.</p>	<p>section 126B(1)(a),</p>	<ul style="list-style-type: none"> - section 150 orders of the NCT; - debt prescribed 	<p>fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater</p>	
<p>157B(3) Any person who continues the collection of, or re-activates a debt under a credit agreement ... commits an offence.</p>	<p>section 126B(1)(b)</p>	<ul style="list-style-type: none"> - section 150 orders of the NCT; - debt prescribed 	<p>fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the</p>	

			greater	
S157C – Registration offences	<p>SS 39, 40, 41, 43, 44, 44A, 134A</p> <p>Concern: 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</p> <p>There may be unintended consequences iro when a person has to register. 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.</p>		<p>fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater</p>	