

DRAFT NATIONAL CREDIT AMENDMENT BILL, 2018

|
*Sub-committee meeting of the PCTI on the Draft NCA Bill
13 March 2018*



national treasury

Department:
National Treasury
REPUBLIC OF SOUTH AFRICA

Guiding questions

- Given where we are at in the process, how do we know we are on the right track?
- Propose a few guiding questions...
 - How can we reach and help the poorest of the poor?
 - How can we have the biggest, most sustainable impact?
 - How can we cause the least disruption to the credit market?
 - How can we ensure that those borrowers who are in good standing, can continue to access credit (if they want it), and are not financially excluded?
 - How can we ensure effective implementation?

What is our vision (revisited)?

- Giving South Africans that are chronically overindebted – **today and in future** - and that have no chance or way to escape that debt, **the opportunity of a fresh start**
- Changing the way that South African's interact with the financial sector, so that this “fresh start” paves the way for **new or changed borrowing behaviour**
- **Focus on incentives, reduce moral hazard:** should last lenders be treated the same as first lenders? Those who can pay, should pay.
- A **sustainable and competitive credit sector**, that is **inclusive, fair, and supports small business**
- Regulatory framework should **support rehabilitation of all borrowers**

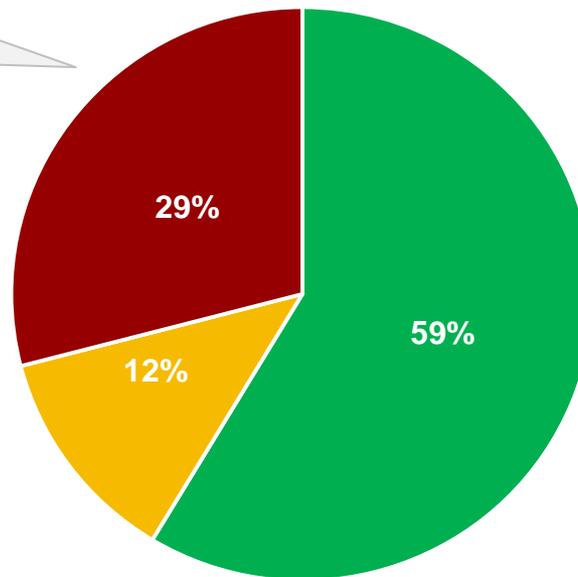
Taking a step back, what problem are we trying to solve?

- Gaps in protection for those struggling under too much debt are:
 - **Weaknesses in debt review system:** only works for South Africans with incomes over R7500k
 - **Weaknesses in insolvency framework:** sequestration does not work for NINAs
- So what needs to be fixed?
 - For those with some income, **improve debt review system**, address issue of “who pays, and what fee” ... *can be done relatively quickly*
 - For those with no income (e.g. job loss, change in economic circumstances), need mechanism to get this cleared, with reasonable consequences for lender and borrower... revising Insolvency Act underway but could take a long time, *how to prioritise and accelerate?*

In total borrowers that could qualify for debt review hold over 16 million loans. Twenty nine per cent of these loans (4.7 million) are three months or more in arrears

LOANS HELD BY BORROWERS THAT COULD QUALIFY FOR DEBT INTERVENTION

Approximately **4.7 million loans** are three months or more in arrears



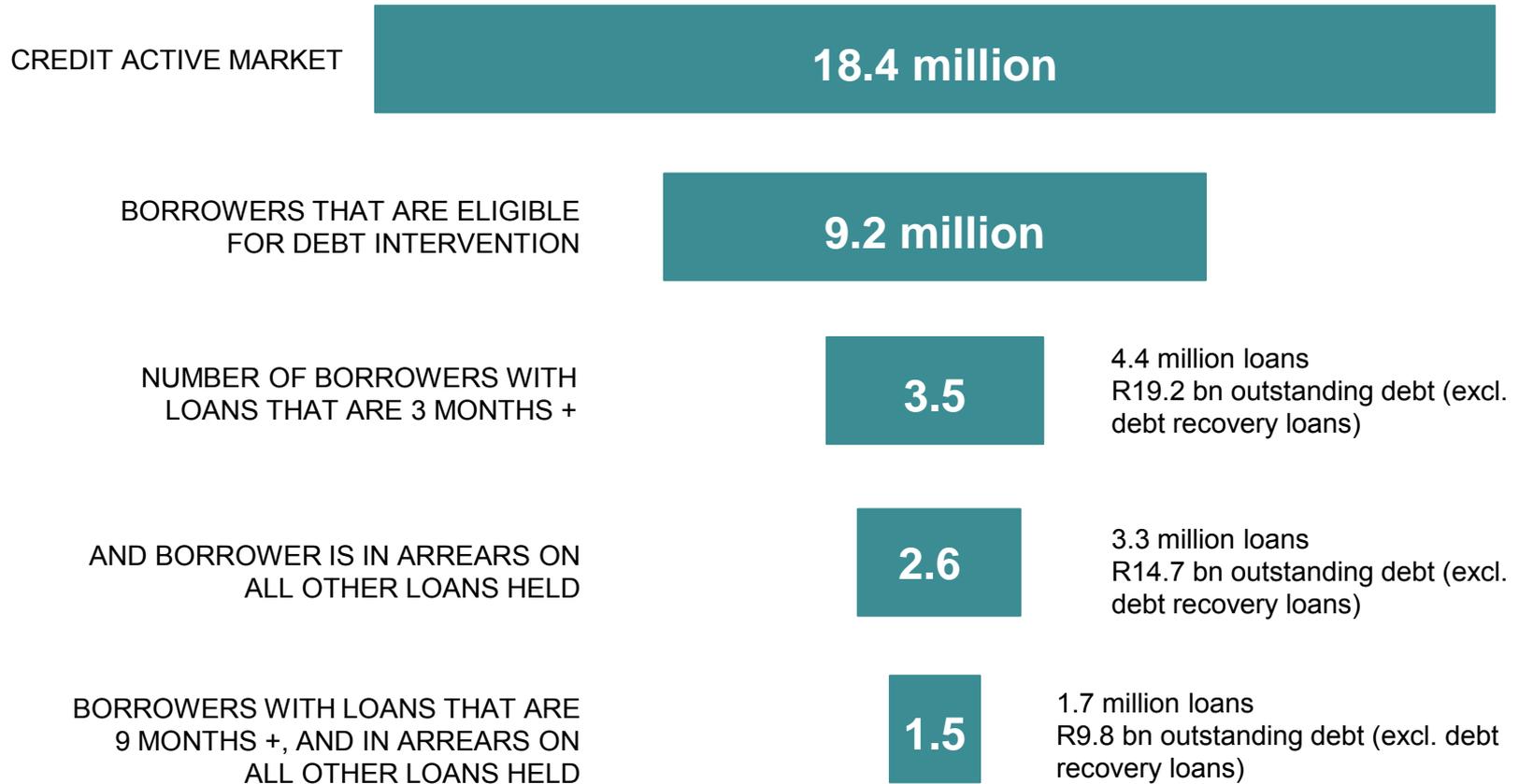
■ Current loans

■ One to two months in arrears

■ Three months or more in arrears

There are 1.5 million borrowers that are eligible for debt relief that have at least one account that is nine months or more in arrears and are not in arrears on all other loans held

NUMBER OF BORROWERS THAT COULD BE ELIGIBLE FOR DEBT INTERVENTION

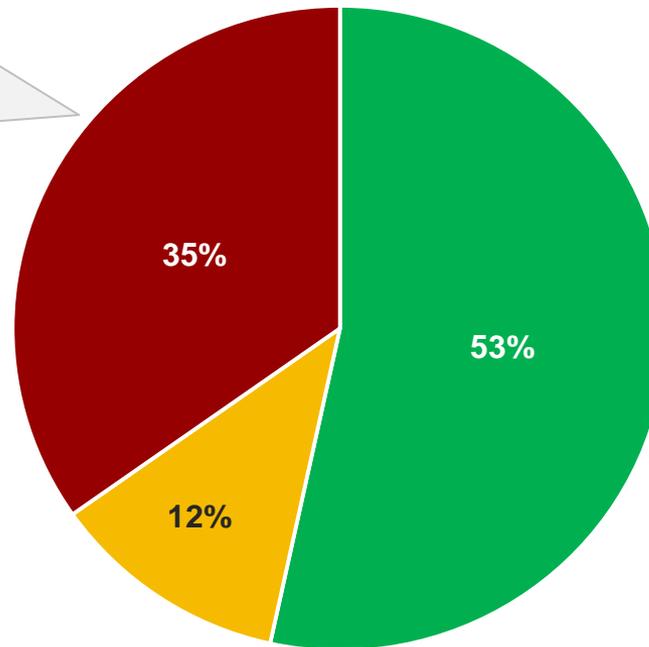


In total borrowers with an income of R1,500 or less have around 2.75 million open credit accounts. Thirty five per cent of these loans (~ 956,000) are three months or more in arrears

LOANS HELD BY BORROWERS WITH AN INCOME OF R1,500 OR LESS

Approximately **956,000 loans** are three months or more in arrears

The following slides focus on these loans that are three months or more in arrears



■ Current loans

■ One to two months in arrears

■ Three months or more in arrears



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Source: Based on a random sample of borrowers and scaled up to total population

Note: Income estimates based on data received from seven participating banks and augmented with XDS predicted income

What can be done for those off the “cliff”

- Can we support the following principles?
 - For consumers who cannot repay their debt
 - Fair access to a fresh start, which means...
 - Fair access to debt review and the opportunity to restructure debt in a way which still delivers a “living” disposable income
 - Fair access to sequestration procedure, even if not to creditor benefit

We previously asked...

What does the draft Bill do?

- Provides once-off and immediate relief for NINAs, future relief (new s 88F) uncertain and unsystematic

What does it not do?

- Does not systematically address situation where a low(er)-income South African is insolvent – insufficient assets and income to cover debt obligations i.e. sequestration
- Does not make improvements to debt review – although this is where the problem starts
- Does not differentiate between someone who cannot rehabilitate because cannot access debt review vs insolvency

Revised proposals

- **We support the proposed changes:** address the root causes of the the problem rather than just the symptom, and brings ongoing relief in a more certain and sustainable way (not just a single point in time)
- Believe that these proposed changes:
 - Significantly strengthens constitutionality: deals especially with procedural arbitrariness and element of substantive arbitrariness relating to “least restrictive means + use existing measures”
 - Begins to align the Bill with international practice: a narrower version of NZ and UK approach (only applies to credit providers; can lead Insolvency Act reform)
- We specifically support:
 - Proposals relating to ongoing NINA sequestration process; replaces the need for *ad hoc* Minister powers (s88F) and compulsory insurance (remains problematic), as this approach has a wider reach, gives certainty and will be of immediate effect
 - Introducing certainty that those who can pay, should pay, reduces moral hazard and keeps those in good standing in the credit market (with access to credit)
 - Leveraging debt review infrastructure, does not “split” the credit market

Revised proposals cont.

- Aligns well with with broader financial sector policy objectives and insolvency reform – DoJ has indicated (preliminary) support
- Clearly defines – does not muddy - roles and responsibilities across credit providers and regulator
- Propose that can still strengthen “substantive arbitrariness” (give further strength to the R7500 income level)
- For this to work, propose should be as simple a process as possible, should be understandable and “predictable” for borrowers and lenders – certainty will reduce disruption and help ensure sustainability
- Not all those who can apply, will necessarily apply – consider current debt review stats

Some practical considerations

- Funding – how much will this cost, who will pay?
 - Cost of extinguishing debt for credit providers (potential impact considered by Eight-20 study)
 - Cost of “subsidy”
- Who is best positioned to process applications?
 - How many applications are being processed by the NCT, how long is the processing time?
 - How many applications / complaints are being processed by the NCR, how long is the processing time?
- Who should own and manage the DCRS? How long will a new DCRS take to implement?
- How can the current “DCRS” be simplified to bring down time and cost for debt relief?

Funding

- Levy credit providers
 - Looks to pre-fund the required subsidy: levied amounts accumulated into a fund (monies are ring-fenced and have dedicated trustees) or an account (of a regulator)
 - Fund/account could then be used to pay debt councillors
 - Some estimates: 0.25c levied on each rand "lent" (across the retail credit sector) would generate around R100m per month.
 - Assuming 90% can be used for subsidies (after costs), gives R90m per month = 22500 debt intervention opportunities per month if costed at R4000 per intervention, and 11250 if costed at R8000 per intervention (the current cost, which we believed could be brought down considerably for the subsidised work).

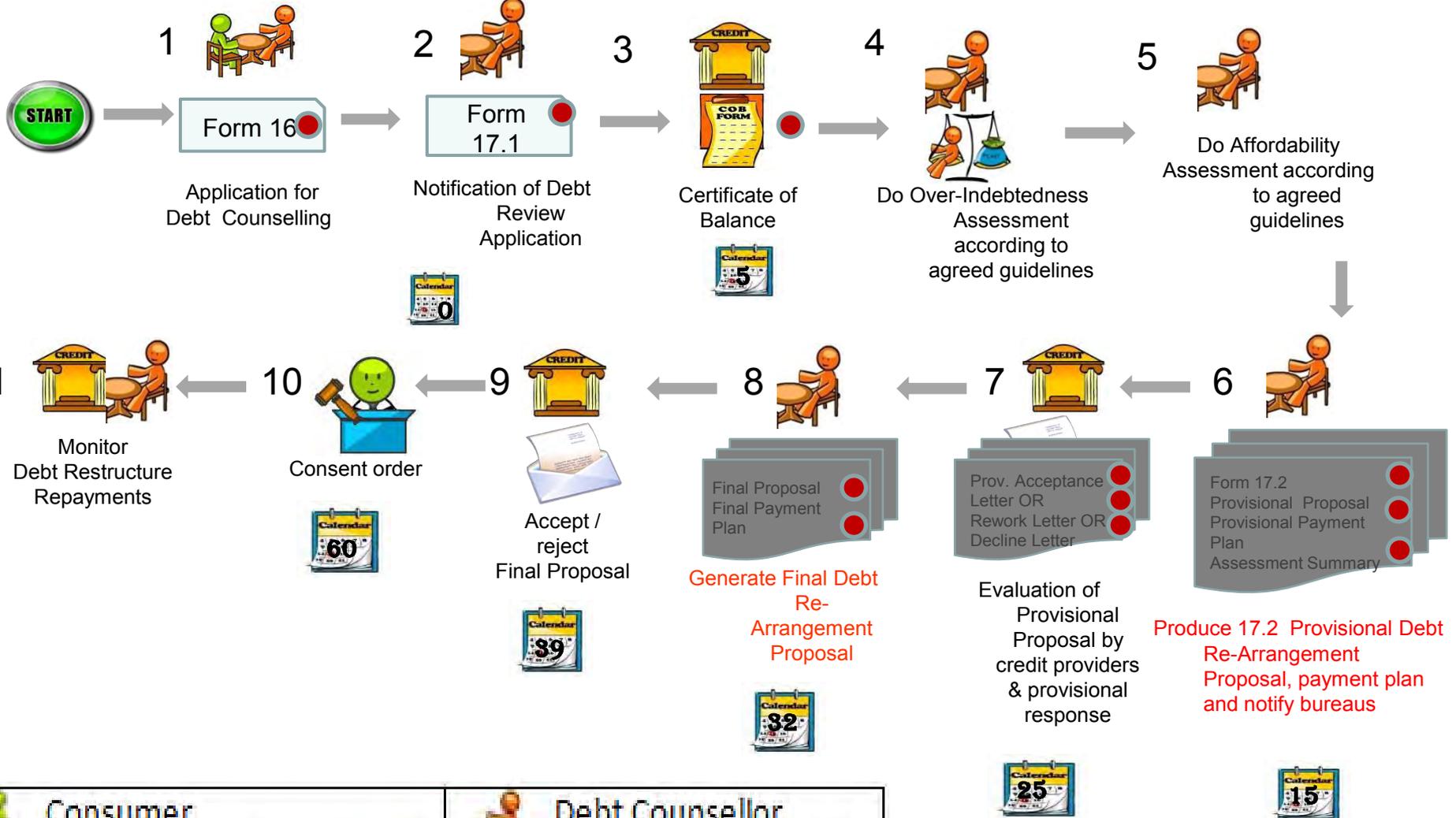
Funding: option to levy credit providers

- Requires enabling provisions in a NT money bill.
- Could characterise as function of the NCR, then outsourced under the oversight of the NCR.
- Challenges with this approach relate to:
 - Governance
 - Cost and management of the account / fund - i.e. who oversees it, who ensures good governance,
 - What are the investment rules, expenditure rules, disbursement rules etc.

Funding: Credit providers “pay-as-you-go”

- Does not apply a levy and therefore is not looking to accumulate funds into an account or fund.
- Would make debt review a consumer right, and compel credit providers - as part of their license obligations - to fund debt counselling for their borrowers earning <R7500 per month.
- Not suggesting that credit providers take over the debt counselling process
- This approach would require additional clauses added to the draft NCAB.
- Simpler from an administrative perspective for the state. BUT may be challenging to enforce this option against all credit providers (DCRS currently voluntary)

Debt Review Process



	Consumer		Debt Counsellor
	Credit Provider		Credit Bureaux
	Standard Output Format		PDA

In conclusion

- Thank you for the opportunity to continue to engage, important for strong and mutually enforcing Government policy (consistent approach across departments)
- Feedback on additional questions to SC forthcoming – under guidance of the PCTI we can further explore and confirm constitutionality “impact” of revised proposals with Council (will be useful to have revised Bill)