



the dti

Department:
Trade and Industry
REPUBLIC OF SOUTH AFRICA

PRESENTATION TO THE PORTFOLIO COMMITTEE: TRADE AND INDUSTRY

THE NATIONAL CREDIT AMENDMENT BILL, 2017 – DEALING WITH DEBT INTERVENTIONS

the dti, NCR AND NCT

6 MARCH 2018

PRESENTERS

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INTRODUCTION

- ❑ **the dti**, the NCR and NCT are in full support of the Bill.
- ❑ **the dti**, NCR and NCT made input on the Bill, on a clause by clause basis on 2 February 2018. This presentation elaborates on previous submissions and also includes commentary on issues raised by stakeholders.
- ❑ A legal opinion on the constitutionality of the Bill is being sought and a report will be presented to the Committee on receipt thereof.
- ❑ Submissions from 45 Credit Industry stakeholders were received and considered.
- ❑ This response will be addressing the critical issues raised.
- ❑ Comprehensive responses contained on the attached Comment Grid/Matrix.

Constitutionality of the Bill

Section 88F4(c)

Comments

- ✓ Extinguishment of debt unconstitutional.
- ✓ Arbitrary deprivation of property.
- ✓ Credit providers not given opportunity to make input (*audi alteram partem* rule).
- ✓ No compelling reason or purpose for deprivation.

Responses by the dti

- **the dti** has sought a legal opinion on the constitutionality of the extinguishment of debt.
- Legal opinion received from National Treasury (NT) indicating that it could be constitutional, but subject to certain drafting amendments.
- Provision should be made in the Bill for NCR's debt intervention officers to negotiate new payment terms with credit providers before making recommendation to NCT.
- The *audi*-principle should be observed as per all applications before the NCT.

Constitutionality of the Bill

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Responses by the dti

- The Bill seeks to provide debt relief assistance to over-indebted low-income consumers falling outside debt review & personal insolvency.
- The NT legal opinion confirms the affected group and the rationale for this group must be clearly defined in the Bill, but could be constitutional.

Constitutionality of the Bill cont.

Comments

- ✓ Consider proportionality of impact of Bill to its desired outcome/purpose.

Responses by the dti

- Proposal – 2 process streams for <R7500 income, R50000 debt, over-indebted consumers:
 - Current debt review process utilising NCR’s debt intervention officers;
 - No Income No Assets (NINA) – Application to NCT to suspend debt for 12 months per application (temporary/limited insolvency intervention).
- To consider date of implementation of the NCA as a “cut-off” date for applications (2007). To address the issue of retrospectivity, purpose will be very important.

Constitutionality of suspension of suspected reckless agreements by NCR

Section 15

Comments

- ✓ Separation of investigation and adjudication powers between NCR & NCT.
- ✓ NCR cannot investigate & adjudicate reckless credit agreements at the same time.
- ✓ Accumulation of interest & fees during period of suspension.
- ✓ Usage of assets by consumers during period of suspension.

Responses by the dti

- We agree with the concerns raised.
- The power to suspend reckless agreements should remain with the NCT.
- If suspended agreement is found not to be reckless by the NCT, accumulated arrear interest & fees would make it difficult for consumer to recover.
- The NCT still have its discretionary powers when granting orders.
- The discretion of the NCT should be unfettered – “must” vis-à-vis “may”.

Reporting of suspected reckless credit agreements to NCR by Credit Providers

Section 82A

Comments

- ✓ Credit providers will not have sufficient information to determine whether other credit providers' agreements are reckless.
- ✓ Competition amongst credit providers.
- ✓ Credit providers have no investigative capacity required.
- ✓ Criminalisation of non-reporting not desirable.

Responses by the dti

- We agree with the concerns raised. Clause should be deleted.
- There is potential for frivolous reporting of suspected reckless credit agreements due to competition amongst credit providers.
- Potential lack of objectivity and independence by credit providers.
- Agree that criminalisation is not desirable.

Reporting of suspected reckless credit agreements to NCR by Debt Counsellors

Section 82A

Comments

- ✓ Criminalization of non-reporting not supported.
- ✓ Debt Counsellors do not have the financial resources to take on reckless agreements matters.
- ✓ Potential of cost orders issued by courts against debt counsellors if they lose.
- ✓ Introduce a fee payable by credit provider to a debt counsellor for an agreement that has been determined reckless.

Responses by the dti

- Disagree with submissions, clause to remain.
- The Act obliges debt counsellors to include reckless agreements in their recommendations to the courts. Extend this to the NCT as well.
- Using debt counsellors should provide speedy redress to consumers since they are involved in assessing consumers' financial positions.
- To consider allowing reckless credit reports to trigger NCR's ability to make referrals to the NCT.

Reporting of suspected reckless credit agreements to NCR by Debt Counsellors

Section 82 A cont.

Responses by the dti

- Other legislation such as Companies Act, BBBEE-Act and Competition Act obliges auditors to refer irregularities to relevant authorities.
- Disagree with proposal that credit providers pay a fee to debt counsellors to assess reckless lending. This could encourage frivolous applications by debt counsellors to the courts.

Current measures within the NCA to deal with reckless credit

Section 82 A cont.

Comments

- ✓ NT legal opinion indicates that the Committee should consider current measures to deal with issues identified.
- ✓ Proposing including NCT in powers provided to Courts in respect of reckless credit.
- ✓ Perception that NCR not dealing with reckless lending adequately.

Responses by the dti

- Current intervention is directed at specific target group.
- In respect of this group, the NCT should have similar powers than courts to deal with all matters (even debt review applications with opposition).

Current measures within the NCA to deal with reckless credit

Section 82 A cont.

Comments

- ✓ Proposing including NCT in powers provided to Courts in respect of reckless credit.
- ✓ Perception that NCR not dealing with reckless lending adequately.

Responses by the dti

- Consumers falling outside of the current targeted group, will still have to rely on current measures of the NCA. Proposed to do slight amendment (as recommended by NT) to include the NCT to hear reckless credit matters for all consumers & debt counsellors and in addition allowing the NCR to bring these matters to the NCT on behalf of the parties.
- In addition, a report of reckless credit should trigger the NCR's ability to make a referral to the NCT.
- Pro-active investigation.
- Similar approach – section 138 of the NCA as an example.

Ministerial powers to prescribe debt interventions

Section 88F

Comments

- ✓ Ministerial power to prescribe debt intervention vague and confers wide discretion which may lead to arbitrary exercise of power.
- ✓ Powers of Minister are extensive and represent an unquantifiable risk to the credit market.
- ✓ Absence of specific criteria & parameters guiding the rationale for exercise of the powers.

Responses by the dti

- **the dti** has sought a legal opinion on this.
- Proposed **dti**-processes will cater for these circumstances in any event as an alternative.
- Each consumer affected by the circumstances could approach the NCR for debt intervention programme.
- It is recommended that the consumers identified for this section be the same as for the rest of the Bill (<R7500 income, R50000 debt).

Mandatory Credit Life Insurance

Section 106

Comments

- ✓ Requirement for compulsory credit life insurance deprives consumers of the right to choose.
- ✓ Credit providers obliged to register as insurers.
- ✓ Credit life insurance regulated by the FSB.

Responses by the dti

- Consumers will still have the right to choose their own insurer.
- Credit providers are not required to register as insurers, but to require consumers to take out credit life insurance.
- Wording in the Bill to be aligned to the current section 106 in the Act.
- **the dti** consults NT and Financial Services Board on credit insurance.

Alternative proposals – reduction of the income threshold

Comments

- ✓ Reduce cut off income to R3500 in line with national minimum wage (consumers earning more than R3500 should be referred to debt review).
- ✓ Debt intervention should be applicable to consumers who owe more than R10000 and earn less than R6000.
- ✓ Include consumers with no realisable assets and income, but with continuing debt.

Responses by the dti

- We disagree with the comments made. The reduction of the threshold would limit the number of qualifying consumers.
- Application to debt of more than R10000 will exclude short term credit transactions.
- The current R7500 threshold to be referenced to an objective criteria and should be reviewable, so that it can increase in the future based on a formula.

Alternative proposals – subsidization of debt review for low income earners

Comments

- ✓ Incentivise debt review by introducing a subsidy for low income consumers.

Responses by the dti

- We agree with this. As per the “2-streams” process proposed.
- Proposal – 2 process streams for <R7500 income, R50000 debt, over-indebted consumers :
 - Current debt review process utilising NCR’s debt intervention officers;
 - No Income No Assets (NINA) – Application to NCT to suspend debt for 12 months per application (temporary/limited insolvency intervention).

Debt write-offs

Comments

- ✓ Currently, loans are being written off in the normal course.

Responses by the dti

- Debt write-off is done to meet accounting standards.
- Writing-off of a debt does not amount to extinguishment, such debts may be on-sold and later collected on.

Education & Awareness & Financial Literacy Programme

Comments

- ✓ Education, Awareness Campaigns and Financial Literacy programme.

Responses by the dti

- Education & Awareness should be a priority.
- MoU's to be entered into with strategic partners.
- Road shows, media i.e community radio and television, community outreach programmes to be utilised.
- **the dti** as part of its Annual Performance Plan (APP) could also be utilised.
- In addition, NCR could offer financial literacy programme in collaboration with partners, i.e NCC, FSB, SETAs, National Lottery Commission and provincial consumer protection services.

Data from credit Bureaus for consumers that earn less than R7,500 income

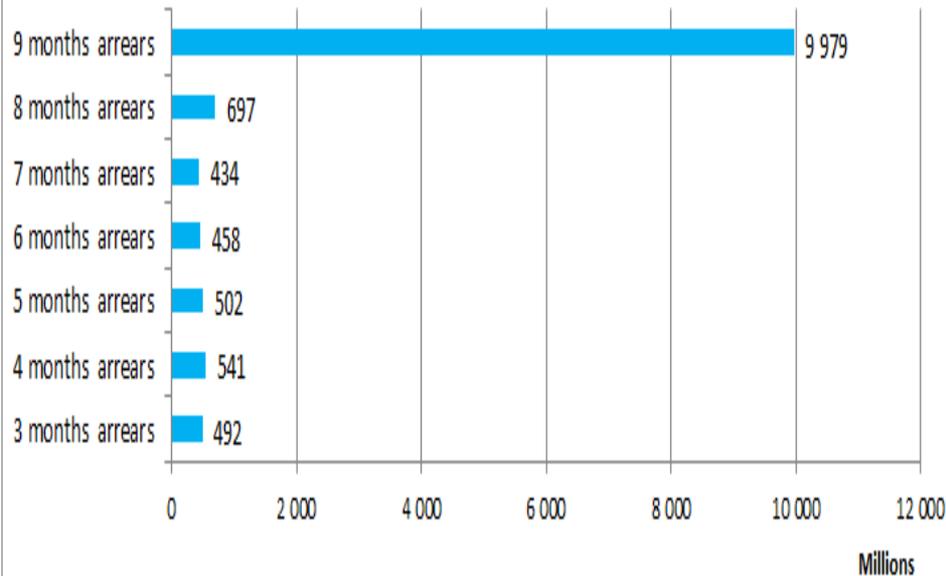
CREDIT BUREAU DATA

- ❑ 1.76 million consumers that earn less than R7500 could potentially qualify for the debt intervention.
- ❑ R13.10 billion of the outstanding debtors for unsecured credit is likely to be eligible for debt intervention.
- ❑ 88% (R11.57 billion) of outstanding rand value is for consumers who are in arrears for 6 months and more.
- ❑ 78% (R1.37 million) is the number of consumers that are in arrears for more than 6 months - this category is unlikely to recover.

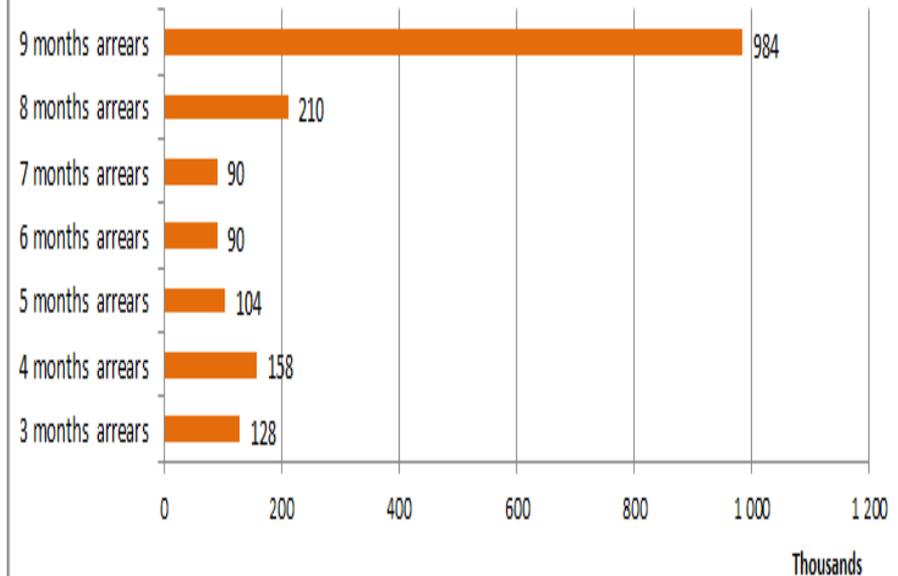
3 to 9+ months arrears data from credit bureau: Less than R7500 income for unsecured credit

CREDIT BUREAU DATA

Outstanding balance (R13 103 866 080)



Sum of Number of consumers (1 764 036)

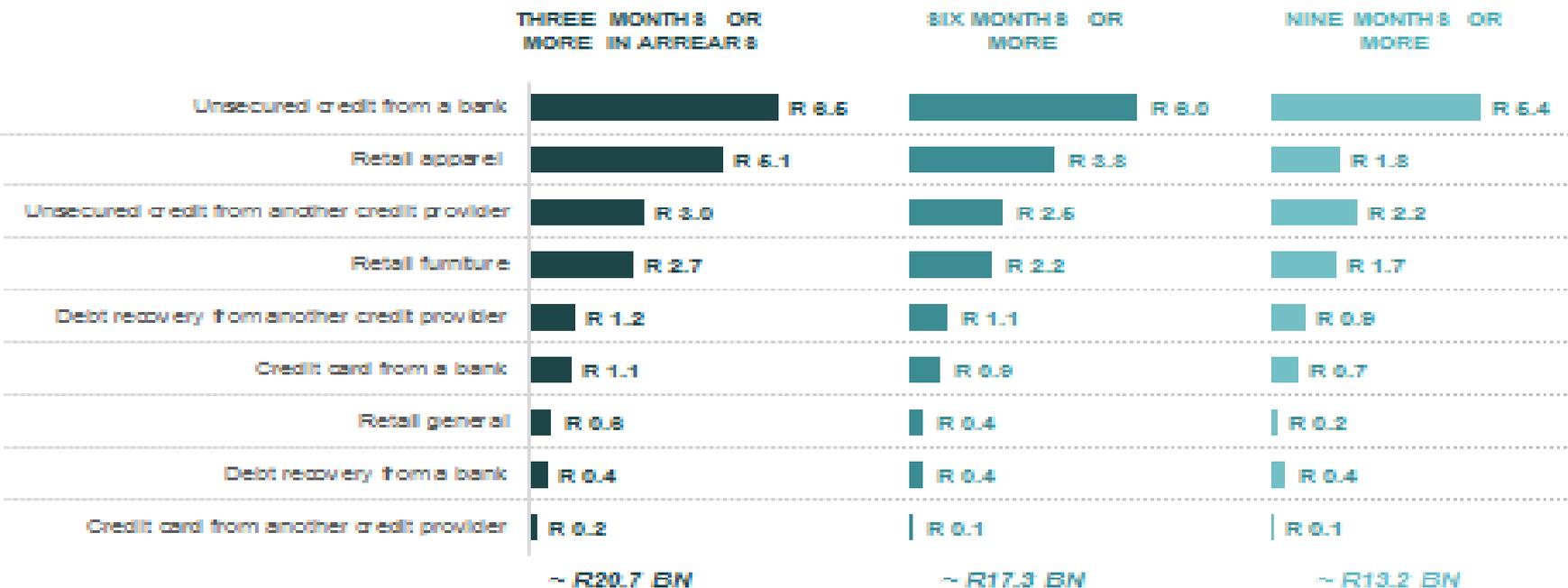


88% (R11.57 billion) of outstanding rand value is for consumers who are in arrears for >6 months; 78% (1.37 million) of the number of consumers that are in arrears in more than 6 months category are unlikely to recover.

Unsecured loans from a bank are most likely to be in very late stages of arrears. Much of this debt may be the African Bank bad book, and much of it may be prescribed. What impact do these loans have on the profile of the credit active base?

NT

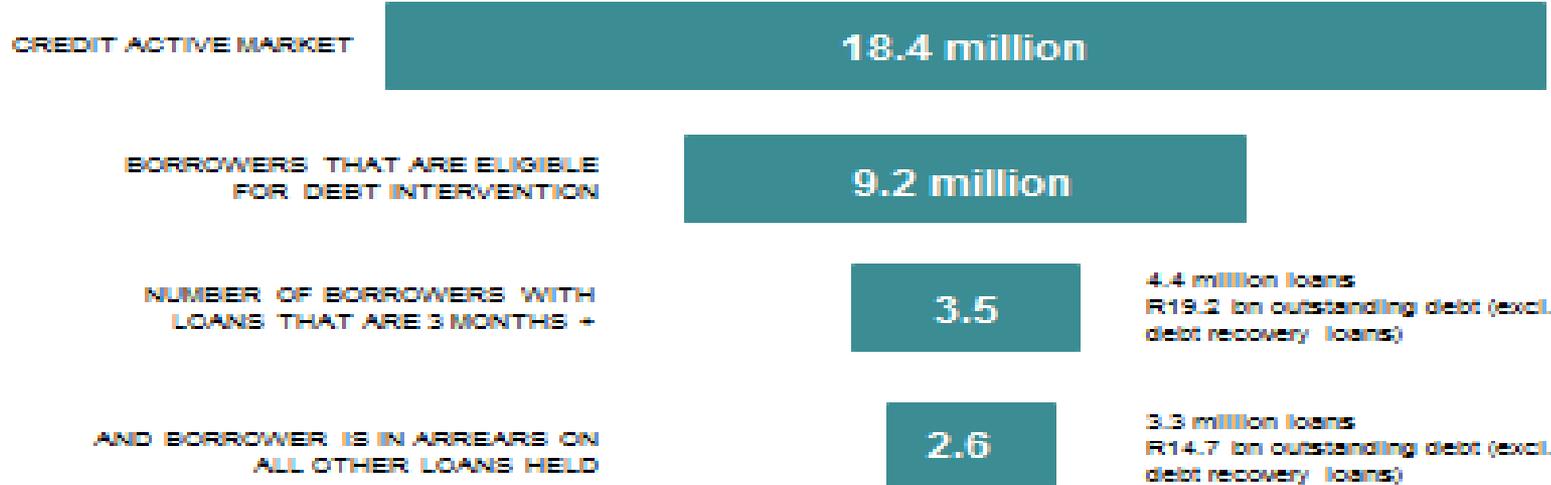
VALUE OF OUTSTANDING DEBT BY ACCOUNT TYPE



There are 2.6 million borrowers that are eligible for debt relief that have at least one account that is three months or more in arrears

NT

NUMBER OF BORROWERS THAT COULD BE ELIGIBLE FOR DEBT INTERVENTION



Is this a good proxy for borrowers who have no capacity to repay?

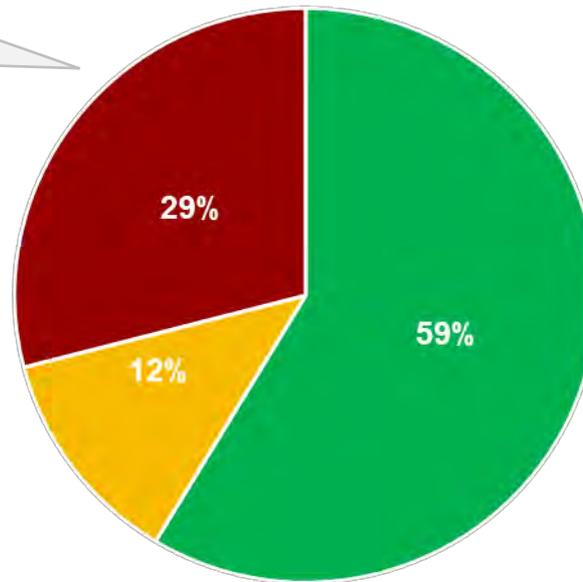


In total borrowers that could qualify for debt review hold over 16 million loans. Twenty nine per cent of these loans (4.7 million) are three months or more in arrears (NT Submission)

NT

LOANS HELD BY BORROWERS THAT COULD QUALIFY FOR DEBT INTERVENTION (IN TERMS OF NT)

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

Implementation Capacity

POSSIBLE NCR CAPACITY REQUIREMENTS

- ❑ The 9.2 million borrowers referred to by NT include all unsecured loans within the targeted group, regardless of whether or not they are over-indebted or in arrears.
 - ❑ The targeted group is much lesser.
- ❑ It only excludes consumers within the targeted group who are currently under debt review and who have judgments against them.
- ❑ According to NT statistics, 4.7 million accounts would potentially qualify.

Implementation Capacity

POSSIBLE NCR CAPACITY REQUIREMENTS

- In terms of NCR statistics, 1.7 million consumers could qualify for debt intervention.
- 1 Debt intervention officer will evaluate 1 application per hour.
- In order to evaluate 141 700 of these applications in a month (totaling 1.7 million consumer applications in a year), approximately 886 debt intervention officers would be necessary.
- If the implementation period (to deal with 1.7 million applications) is spread over 3 years, this number will be reduced to 295 debt intervention officers.

Implementation Capacity

POSSIBLE NCR CAPACITY REQUIREMENTS

- ❑ In order to facilitate financial literacy programme, 5 trainers would be required. They will be presenting to financial literacy programme as well as train debt intervention officers. The regulations will have to deal with this and to look at possible funding for presentation of the programme.

Implementation Capacity

RESOURCES

1. IT infrastructure
 2. Develop an app
 3. Recruit personnel
 - ✓ Administrative
 - ✓ Call centre
 - ✓ 5 legal advisors
 - ✓ 3 auditors/accountants
 - ✓ 70 debt intervention officers initially
 - ✓ Manager
 - ✓ 3 ICT employees
 - ✓ 5 Training officers
- Approximate Cost: R75 million for the first year

NCR CAPACITY REQUIREMENTS

- 4 Identify Office space
 - Could consider Post Office.

NCR PROCESS

A. PROCESSES

Application for debt intervention

- ✓ Capturing
- ✓ Analysis
- ✓ Request information
- ✓ Invite inputs/comments from credit providers
- ✓ Further analysis
- ✓ Assess reckless/unlawful lending
- ✓ Prepare a recommendation
- ✓ Flag the consumer at the credit bureaux

Submit recommendations to National Consumer Tribunal and serve credit providers with a copy

- ✓ Present recommendations

Orders from National Consumer Tribunal

- ✓ Capture orders
- ✓ Submit orders to the bureaux & PDAs

NCR PROCESS

Distribution of payments by PDAs

- ✓ Load payment plans & orders with PDAs
- ✓ Distributions
- ✓ Interactions with PDAs

THINGS TO DO

- ✓ Design application form
- ✓ Develop criteria (documents, information required, verification (deeds offices, licensing, CIPC))
- ✓ Develop DCRS (include write offs, calculations)
- ✓ Prescribe PDA fees
- ✓ Appoint a service provider to develop system
- ✓ Develop financial literacy programme
- ✓ Draft regulations

Implementation Capacity

POSSIBLE NCT CAPACITY REQUIREMENTS

- ❑ It is anticipated that approximately 50% of the initial applications received by NCR, will be successful.
- ❑ 1 Tribunal member can adjudicate on 700 applications per month.
- ❑ In order to adjudicate on 63000 of these applications in a month, approximately 90 Tribunal members would be necessary. This figure will be reduced to 30 Tribunal members if the applications are dealt with over a 3 year period as oppose to a 1 year period.

NCT CAPACITY REQUIREMENTS

RESOURCES

1. IT infrastructure - enhancement
2. Electronic interface with NCR system.
3. Recruit personnel & Members
 - 90 Additional Part-time Tribunal Members
 - 20 Additional Case Management employees
 - 3 Additional ICT employees
4. Additional office space

Approximate costs: R78 million for the first year.

NCT PROCESSES

- The current motion court process will be utilised to adjudicate on these matters.
- Forms set by regulation, should require minimal input from a Tribunal member (preferably only signature and stamp) and space to include return date which can be inserted by case management staff.
- For purposes of system forms to allow electronic submission and processing, it is recommended that NCR and NCT use a “combined” system, where NCR’s input is received in the system by NCT and processed directly.

NCT PROCESSES

- ❑ Key processes will include:
 - ✓ Registration and logon process;
 - ✓ Completion and submission of electronic forms;
 - ✓ Web service to allow NCR to file bulk applications to the NCT;
 - ✓ Current motion court process for those applicants who are rural and especially to deal with opposed matters.

CONCLUSION

- ❑ **the dti**, NCR and NCT support the Bill.
- ❑ Legal opinion on the constitutionality of certain clauses in the Bill is being sought.
- ❑ **the dti** is available to conduct a socio-economic Impact study. The approval of the Portfolio Committee is sought to commence with the process.



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THANK YOU