

140129pctrade

Credit Bureau Association
Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.
P.O. BOX 2146, Pinegowrie.2123, Johannesburg
T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za
www.cba.co.za



Date: 29 November 2013

Attention: Committee Secretary – PC Trade and Industry

Mr Andre R Hermans

By email to: ahermans@parliament.gov.za

mherling@parliament.gov.za

dwoodington@parliament.gov.za

Dear Mr Hermans

RE: CREDIT BUREAU ASSOCIATION COMMENTS RELATING TO THE DTI'S NATIONAL CREDIT AMENDMENT BILL, 2013

The Department of Trade and Industry's ("DTI") publication of the National Credit Amendment Bill (the "Bill") in Government Gazette No. 36916, General Notice No. 1016, of 09 October 2013 has reference.

We thank you for the invitation and opportunity to provide written submissions and commentary on the Bill, and the Credit Bureau Association's ("CBA") comments are contained in this document.

General

As raised in our previous submission, we believe that the new data submission requirements (for example, in the new section 71) should be accompanied by a proper distinction between the different types of credit bureaus. With the current requirements to register as a credit bureau in the NCA (section 43) being so, the reality is that not all registered credit bureaus operate as traditional, fully fledged credit bureaus. As such, any requirements around the submission of consumer credit information should be limited to the CBA's full large member credit bureaus which are able to receive and process the information in a manner traditionally understood and expected of a credit bureau, and which operate as a proper, fully fledged credit bureau.

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



A mandatory requirement for the submission of such information to all registered credit bureaus would be to submit information to an entity unable to process the information, which will be in clear contravention of pending data privacy laws such as the Protection of Personal Information Bill (where information can only be processed for a specific processing purpose, usually with the individual's consent).

It would also increase the risk of abuse and excessive or unnecessary processing of this information. Currently only 4 (four) CBA full large member credit bureaus operate as traditional and fully fledged credit bureaus, and which accordingly enjoy access to full file credit provider data. If this were to suddenly increase to the 12 (twelve) credit bureaus currently registered as such with the NCR, the potential for a data breach, a system hack, a misuse of data and the like increases exponentially, which is ultimately detrimental to consumers. Considering the sensitive nature of this personal information, the Bill would be the ideal opportunity to either:

- amend the NCA to categorize different types of credit bureau in accordance with their functions e.g. fully fledged credit bureaus (which issue full credit reports, provide the true credit bureau services that inform the reporting requirements of the NCR, comply with the verification obligations in the NCA, have consumer dispute processes in place, etc.) from the non-traditional credit bureaus (who are currently obliged to comply with, *inter alia*, reporting and other obligations which may mostly be meaningless in the circumstances, such as the provision of a quarterly synoptic report of statistical information, relating to credit market activity, by an entity that does not hold any of the information to which the report pertains); or
- amend section 70(1) of the NCA to specifically provide that the categories of consumer credit information outlined in section 70(1) be read with the definition of 'consumer' in the NCA, and that a data record only be deemed 'consumer credit information' if, from the data record, it is apparent that the data subject is an applicant for credit or the recipient of credit (i.e. to clarify that it is only when personal information is combined with credit information that the record become a record of consumer credit information).

We repeat our offer to the DTI to assist it in any discussions around or categorisation of credit bureaus, and hereby extend an invitation to the DTI once again to further engage and consult with it in this regard.

The Bill

1. Paragraph 11 – Insertion of section 58A in the NCA

We recommend that the required debt counsellor's notification letter to the credit bureaus in section 58A(1)(b) be submitted through the Debt Help System and be accompanied by the identification of the debt counsellor to whom a consumer's case has been transferred.

The word 'seized' in the proposed section 58A(2)(b) should be 'ceased'.

2. Paragraph 12 – Amendment of section 71 of the NCA

It is recommended that the words 'or any credit bureau' in subsection 4 be amended to read as *'and all registered credit bureaus which operate as a traditional, fully fledged credit bureau, as this term is generally understood in other global markets, and are able to receive and process this information'*. This should ensure that all registered credit bureaus that are able to host this debt counselling information receive notice of these clearance certificates and are able to timeously update their records. Alternatively, if credit bureaus are categorised in line with our recommendations above, then such categorisation could simply be referred to in this section.

In addition to this, the impact of the obligation on a debt counsellor to issue a clearance certificate within 7 days after the consumer has *'demonstrated financial ability to satisfy every current obligation under every credit agreement'* in section 71(1)(b) should be carefully considered. Without the Act being more specific around the meaning of the words in italics, there is scope for interpretation and resultant confusion, disputes or abuse. The current wording is vague and could have repercussions on the credit bureaus if consumers can start disputing the fact that they are under debt review, where such disputes are not easily resolved through the provision of credible evidence by either party. The bureaus may be placed in a position where they are expected to act as *'judge and jury'*, which could never have been the intention of the section. Also, there is a risk that information is incorrectly removed in the event of credible evidence not being received from a debt counsellor within the prescribed 20 day dispute period. There should therefore be absolute certainty and clear guidelines as to when a debt counsellor must issue such a clearance certificate, or alternatively this option should be removed and the current wording should remain unaltered.

On a similar note, the Bill should clarify that the consumer's right to challenge the "accuracy" of information appearing on their profile extends to information which is factually incorrect and which would impact credit risk assessment – and not to contact

information or the like (where consumers can simply update their profiles with current information – without the need to follow a lengthy dispute process and without the need for the credit bureau to request ‘credible evidence’ of this information).

Finally, given the expanded obligations placed upon debt counsellors under this section, we would recommend that section 71(7) of the NCA also be amended to make it an offence for debt counsellors who fail to comply with a s55 compliance notice issued under this section 77. Currently, this section only stipulates that it is an offence if credit bureaus do not comply with such a notice.

3. Paragraph 13 – Insertion of section 71A of the NCA

Separation of data submission and data removal

This section essentially deals with two different concepts, as follows:

- the data submission requirements of credit providers; and
- the removal obligations on credit bureaus.

It is recommended that this new section in the Act only deal with the data submission requirements placed on credit providers, and that the removal obligations [in section 71A(2)] should be removed from this new section, and should be appropriately included or expanded upon in Regulation 17, which already contains retention periods for different categories of information.

In this regard, please see the proposed amendments (which have been included in red, for convenience) to the table in Regulation 17(1) below:

17. Retention periods for credit bureau information.—(1) The consumer credit information as per the following Table may be displayed and used for purposes of credit scoring or credit assessment for a maximum period from the date of the event as indicated:

	<i>Categories of Consumer Credit Information</i>	<i>Description</i>	<i>Maximum period</i>
1.	Details and results of disputes lodged by consumers	Number and nature of complaints lodged and whether complaint was rejected. No information may be displayed on complaints that were upheld	18 months
2.	Enquiries	Number of enquiries made on a consumer's record, including the name of the entity/person who made the enquiry and a	2 years

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



		contact person if available	
3.	Payment Profile	Factual information pertaining to the payment profile of the consumer	5 years
4.	Adverse classifications of consumer behaviour	Subjective qualifications of consumer behaviour	1 year or until settled by the consumer in terms of section 71A
5.	Adverse classifications of enforcement action	Classifications related to enforcement action taken by the credit provider	2 years or until settled by the consumer in terms of section 71A
6.	Debt Restructuring	As per section 86 of the Act, an order given by the Court or Tribunal	Until a clearance certificate is issued
7.	Civil court judgments	Civil court judgments including default judgment	The earlier of 5 years or until the judgment is: <ul style="list-style-type: none"> i. rescinded by a court; or ii. abandoned by the credit provider in terms of any formal court process; or iii. until the judgment is settled in full by the consumer, as confirmed by the credit provider.
8.	Administration Orders	As per the court order	The earlier of 10 years or until order is rescinded by a court or until the order lapses in terms of section 74U of the Magistrates' Court Act, 32 of 1944
9.	Sequestrations	As per the court order	The earlier of 10 years or until rehabilitation order is granted
10.	Liquidations	As per the court order	Unlimited period
11.	Rehabilitation Orders	As per the court order	5 years
12.	Business rescue (court ordered or voluntary)	As defined in the Companies Act, No 71 of 2008	Until terminated under s132 of the

Full Large Members: Compuscan; Experian; TransUnion; XDS. **Full Small Member:** CPB
Associate Members: Cred-it-Data Online; Inoxico; LexisNexis Risk Management; Tenant Profile Network

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



			Companies Act
13.	Other information	Any other information not included in any category above	2 years

The balance of section 71A(2) can then be included as a new Regulation 17(6), stating that:

“A credit bureau must remove all adverse classifications of consumer behaviour and adverse classifications of enforcement action from display within seven days after receipt of the settlement information contemplated in section 71A(1) from the credit provider”

Additionally, it is only the data (or adverse listings) in s71A(1)(a) and (b) which must be removed, and not the payment profile data in s71A(1)(c). This payment profile data can only be updated, not removed. As such, it is strongly recommended that the reference to payment profile information [in section 71A(1)(c)] must either be removed in its entirety, or the section must clarify that the payment profile data must be updated, and not removed.

Inclusion of missing information types

It would appear that settlement of ‘civil court judgments’ in item 7 of the table in Regulation 17 has been omitted from the ambit of section 71A and, as it was clearly the DTI’s intention to remove the need for consumers to follow costly rescission processes, it is submitted that these judgments should be included into Regulation 17(1). However, this does raise the question of the meaning of judgments which are ‘settled in full’ and the Regulations will need to define whether this settlement is to the capital amount only, or whether it would include the settlement of capital, interest, costs, and the like. Alternatively, such a settlement could be as confirmed by the credit provider. The latter option has been included into the wording in the table above. This clarity is again required to prevent consumers raising the defence or dispute of a debt having been settled in full, and pulling the credit bureaus into such disputes to play the role and ‘*judge and jury*’.

The passage of time has also brought to our attention that the current Regulation 17 to the NCA has failed to include display periods for certain other types of information, which is to the detriment of consumers and which could probably be easily included into the Amendment Bill being proposed. The time may be opportune to include these amendments into Regulation 17 in the Amendment Bill. The types of information being referred to are as follows:

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



Abandonment of High Court Judgments

Regulation 17(1) currently only refers to judgments abandoned under the Magistrates' Courts Act 32 of 1944 ("MCA"), which means that these abandoned judgments may be removed from a consumer's credit report. There is no similar provision for judgments abandoned in the High Court, even though such abandonments are indeed contemplated and permitted in terms of Rule 41(2) of the Supreme Court rules.

This has led to abandonments in the two courts being treated differently, in that abandonments of High Court judgments cannot be completely removed from a consumer's credit report, and the consumer's report can at best be annotated or endorsed with wording to the effect that the judgment has been abandoned.

There exists, as a result, discrimination between judgments taken in the Magistrates' Court and those taken in the High Court, which is prejudicial to consumers with judgments taken against them in the High Court. This position is further exacerbated by the fact that the MCA provides for the rescission of judgments through its Rule 49, and by means of which most judgments are generally rescinded (thereby alleviating the need for section 86 abandonments), while the High Court again does not have a similar rule for rescission of High Court judgments by consent. As such, consumers with judgments in the High Court can accordingly really only rely on the abandonment of the judgment in terms of Rule 41(2) following a settlement between the parties, while still being unable to fully restore his/her credit status given that the credit bureaus are unable to remove this information, thereby potentially exposing the consumer to prejudice by an uninformed credit provider.

It is therefore recommended that regulation 17(1) be amended to include abandonment of judgments by a court generally (which will then include High Court Abandonments under Rule 41(2)), to remove this seemingly unwarranted differentiation in the treatment of these two types of abandonments of judgment.

Administration Orders under the Magistrates' Courts Act – s74U and s74Q

Item 8 in Regulation 17 prescribes that administration orders be displayed for a period of 10 years or until rescinded by a rescission order granted by the court under whose supervision the administration order is being executed, in terms of s74Q of the MCA.

However, s74U of the MCA also allows for the automatic (and inexpensive) lapsing of an administration order once all administration costs and listed creditors have been paid in full, and the administrator lodges a certificate to this effect with the

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



clerk of the court and creditors. While this section is appealing to debtors from a cost and ease perspective, regulation 17 of the NCA does not permit the removal of this information from display on the debtor's credit record at the credit bureau, and the credit bureaus currently are only able to update the consumer's record to reflect that the listed creditors have been paid in full, which will still prejudice the consumer.

In addition to this, once an administration order has lapsed in terms of s74U, the court is no longer able to rescind the administration order (as it is legally unable to rescind a lapsed order). The debtor has therefore lost the ability to apply for a rescission in this event.

It is therefore recommended that regulation 17(1) be amended to include lapsing of administration orders in terms of s74U of the MCA to remove the current prejudice caused to consumers under this section.

Business Rescue Proceedings under the Companies Act, No 71 of 2008

The application of the NCA is in general extended to businesses with asset value or annual turnover of less than a million rand, except where these small businesses enter into large credit agreements. Regulation 17(1) should therefore also be amended to include and cater for business rescue applications made in terms of the Companies Act, which permits companies to enter business rescue either voluntarily or by court application. Regulation 17(1) should therefore be revised to include business rescue (regardless of the process followed to enter business rescue), with the maximum period for display being 'until formally terminated in terms of s132 of the Companies Act'.

In this regard, please see the proposed amendments (which have been included in blue, for convenience) to the table in Regulation 17(1) above.

There may also be opportunity to outlaw certain acts relating to garnishee orders and other abusive practices in the NCA itself, such as the obtaining of a consent to judgment by the consumer at the time of application for credit. These issues could be included as additions to sections 89-91 of the NCA, which relate to unlawful credit agreements, unlawful provisions in credit agreements, and prohibited supplementary requirements and documents.

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



Automated submission of data by credit providers

Section 71A would be more appropriately named “**Automated updating of consumer information**”, or similar. This recommendation is made because the credit bureaus are unable to comply with the 7 day requirement if they were to receive this settlement information manually or by email.

As such, we further recommend that best practice in this regard be followed, and that the already well established mechanisms of i) electronic submission of data; ii) consistent input data layouts; iii) submission validation criteria; and iv) reciprocity of data sharing be agreed and prescribed in section 71A. There already exist well established mechanisms within the industry, which are available for use.

Additionally, credit providers and credit bureaus must be afforded sufficient opportunity to agree and implement any operational and system requirements, and the effective date of section 71A and Regulation 17 (as it pertains to the new section 71A) should be stipulated at a date in the future, or included in a phased manner, thereby affording all impacted registrants sufficient time to comply.

Alternatively, use of the automated mechanisms could be prescribed for credit providers above a certain size, with the remainder being able to submit this information in an agreed submission template, to be uploaded by the credit bureau at the end of the month in which the submission is received. For example, the categories of credit provider described in Schedule 2 of the Prescribed Time Frame for Free Credit Reports and Determination of Application and Registration Fees, in Schedule 2 of the Government Gazette number GG29245 of 21 September 2006 could be used for such a distinction.

Consumer complaints

It is submitted that the complaints to the NCR contemplated in section 71(3) could follow the dispute process already provided for in the NCA.

4. Paragraph 14 – Amendment of section 73 of the NCA

The amendments to this section are, at the very least, alarming. The amended provisions not only pave the way for the implementation of future credit information amnesties (while we have been repeatedly assured, by both the DTI and the NCR, that the upcoming proposed removal of credit information is intended to be the last), but the scope of this proposed amendment has wide implications, including the potential review, verification, correction and/or removal of information by a credit bureau.

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



Each time that credit information is manipulated and removed through forced amnesty, industry's credit information system and first class rating with the World Bank are undermined, potentially irrecoverably.

Such an amendment, together with the daily removal of information in terms of the prescribed retention periods and the introduction of new information removal rules (such as s71A of the Bill), all serve to dilute and detract from the criticality of such information in a first class credit information system.

Whilst the powers given to the Minister under this amended section are subject to the obligation on the Minister to engage and consult with stakeholders, and to conduct impact analysis in order to understand the extent of the impact, the fact remains that the extent of any future credit information amnesties can be determined despite any issues raised during these engagements and consultations. Such an amendment is therefore undoubtedly open to abuse and enormous risk, especially if such amnesties are implemented without a full understanding and appreciation of the role and importance of credit information in a credit system, as well as the impact to the operations of credit bureaus in general

Over the passing of time, the credit bureaus have invested heavily in time, resource and investment, in order to uphold and improve their obligations under the NCA, and to improve the manner in which data is supplied, received, stored and maintained, and made available to consumers. These costs of compliance are unreasonably increased each time such a credit information amnesty is introduced. We are of the view that procedurally, the proposed amendment would be administratively and procedurally deficient as well as unfair.

Additionally, it is inequitable to place additional audit obligations (and costs) onto the credit bureaus in respect of the removal of credit information to which they are strongly opposed. The costs of any such additional audit, or the increased cost to the credit bureaus where such an audit forms part of their annual audit, should be borne by the NCR.

The ongoing removal of paid up information as introduced by the second amnesty, together with the automatic removal of data via the retention rules, should in any event alleviate the need for any other once-off removal of information, and therefore for any future amnesties.

The CBA is therefore completely opposed to such an amendment and propose that the powers given to the Minister relate only to the current second, once-off amnesty, the first amnesty having been undertaken in around 2006.

We trust that our comments will be received as constructive and in the spirit in which they are submitted.

Credit Bureau Association

Coachmans Office Park, 4 Brian Street, Lyme Park, Bryanston.

P.O. BOX 2146, Pinegowrie.2123, Johannesburg

T 011 463 8218 F 011 463 8386 E enquiries@cba.co.za

www.cba.co.za



We confirm that we would like to accept the invitation extended by you to make oral submissions in respect of the Bill and, in addition to this written submission, we hereby request that we be granted the opportunity to do so.

As an industry we welcome any debate or discussion around our comments and recommendations.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Lisa Maino', is written over a faint, circular stamp or watermark.

Lisa Maino

LEGAL CONSULTANT TO THE CBA

