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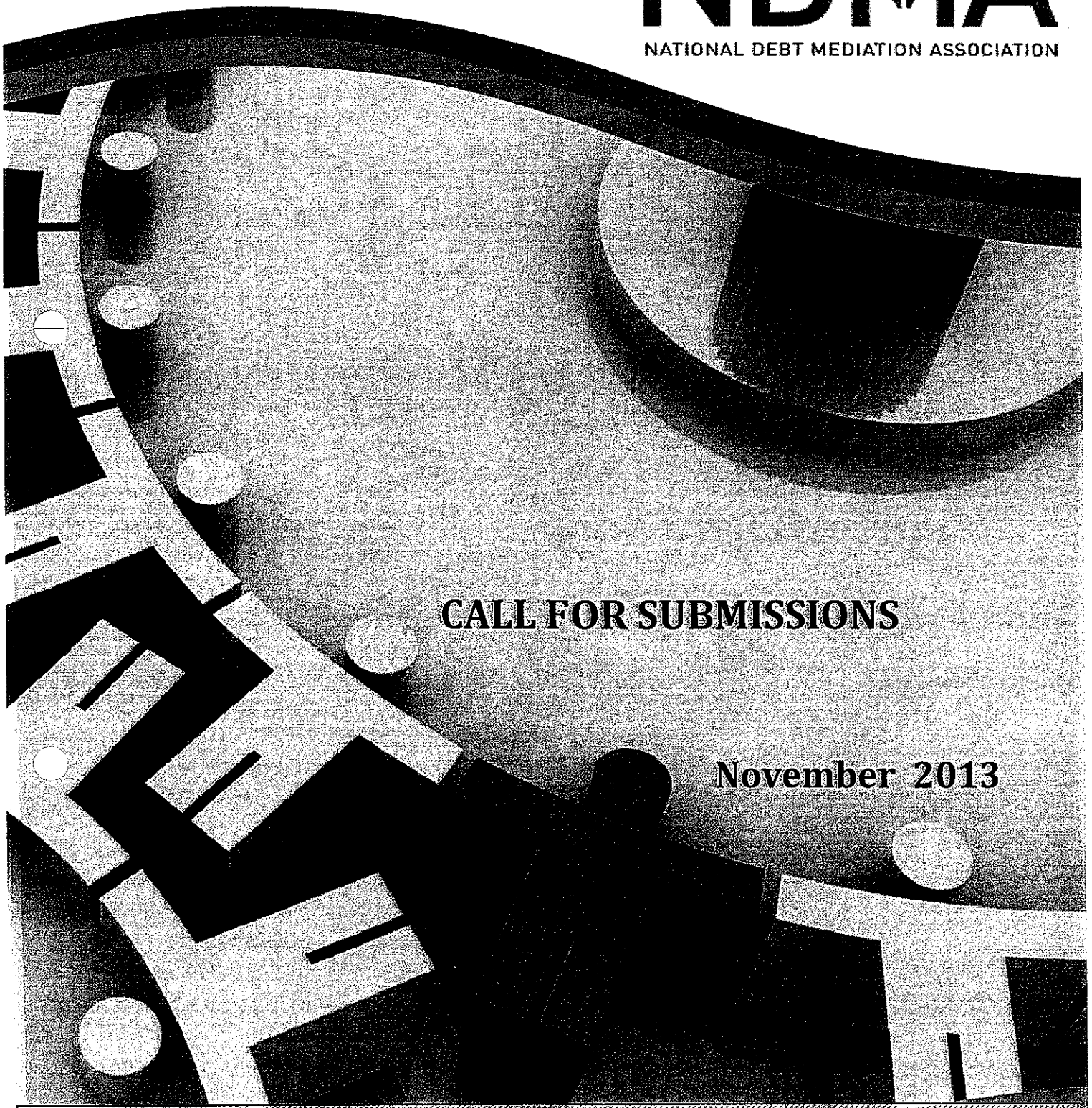
NDMA

NATIONAL DEBT MEDIATION ASSOCIATION



CALL FOR SUBMISSIONS

November 2013

NDMA Comments on the National Credit Amendment Bill [B 47-2013] as introduced and referred to the Portfolio Committee on Trade and Industry

Friday, 29 November 2013

Ms J Fubbs
Chairperson, Portfolio Committee on Trade and Industry
Box 15
Parliament
Cape Town

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For Attention Mr A Hermans

Dear Mr. Hermans

INVITATION FOR PUBLIC COMMENT: CALL FOR SUBMISSIONS ON THE NATIONAL CREDIT ACT AMENDMENT BILL

Thank you for the opportunity to comment on above mentioned.

Please find attached comments on the National Credit Amendment Bill [B 47-2013] as introduced and referred to the Portfolio Committee on Trade and Industry.

We would like to forward a request to make an oral submission to the committee as well.

Please note the attached letter marked as "Trade and Industry Letter – 11th September 2013" sent to the Minister of Trade and Industry regarding Alternative Remedies for Consumer Debt Resolution where the NDMA requested high level consultation to address this urgent need. Following this letter a very constructive meeting took place on 8th November 2013 between Zodwa Ntuli, Deputy Director General, Consumer and Corporate Regulation Division, DTi and Magauta Mphahlele, CEO of the NDMA where they were in agreement that:

- The Tribunal should be able to confirm all debt counselling consent orders as this will reduce the cost of debt counselling by prevent matters from unnecessarily going to the courts.
- Funding for NGO's is necessary and could possibly be achieved through a fund managed by the NCR for consumer education and low income consumers who cannot afford debt counselling and other remedies. Industry should contribute to this fund.
- Emolument attachment orders and administration orders need urgent attention and DTi should work with the Department of Justice on these matters.
- Guidelines to ensure standard industry practices when engaging with consumers on a voluntary basis should be issued as at present consumers have to contend with competing demands of various credit providers when they are negotiating the restructuring of their debts either on their own or through the assistance of third parties.

An introduction to the National Debt Mediation Association (NDMA).

The National Debt Mediation Association ("NDMA") was established in 2008 to co-ordinate, implement and improve the self-regulating agreements initiated by the first National Credit Industry Steering Committee (NCSIC), as regulated under section 48(1)(b) of the National Credit Act ("NCA").

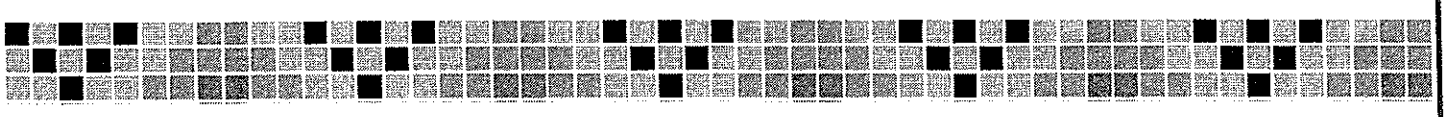
The NDMA's founding and affiliated members included the "big five" banks as well as most of the registered banks, retailers that sell on credit, motor financing houses, and micro-finance providers, all of whom were bound by a Code of Conduct.

Since January 2011, the NDMA has also been the vehicle through which the credit industry has implemented voluntary concessions and processes in debt review processes, as agreed by the National Credit Regulator's Task Team on Debt Review under the auspice of David Lewis, who chaired the Competition Tribunal previously, the current Executive Director of Corruption Watch.

NDMA Role post the NCR Task Team

After the deliberations of the NCR Task Team, the credit industry and other role players agreed with the NCR that the role of the NDMA as defined below remained acutely relevant in the context of the findings and recommendations of the NCR Task Team. In this regard the NDMA was therefore requested to prioritize the:

- Adoption of debt review process guidelines emanating from the task team process and NDMA process rules binding on affiliated CP's and DC's for purposes of consent matters in the statutory debt review process, processed (at the election of the DC/consumer) under the NDMA Code.
- Adoption of the affordability and over-indebtedness assessment guidelines emanating from the NCR Task Team process as NDMA guidelines binding on affiliated CP's for consent matters in the statutory process, processed (at the election of the DC/consumer) under the NDMA Code.
- Final negotiation of and consideration of the adoption of the revised industry debt re-arrangement rules as proposed by the NCR Task Team for the consensual resolution of statutory debt review matters as well as voluntary settlements (outside the statutory process), including an appropriate systems solution to support all DC's in the application of these rules (if they so elect) to re-arrange consumer debts.
- In this regard the solution had to enable the absolute consistent application of the rules across all front end DC platforms and solutions preferably with an NDMA warranty of integrity that would generate the necessary CP trust to automatically accept the generated debt re-arrangement proposals. To the extent that these rules require CP's to make concessions beyond what the law can impose, these would be subject to industry agreement in accordance with the NDMA constitution, although the rules will at all times need to comply to all relevant provisions in the NCA.



- Acceleration of an appropriately systemized NDMA complaints resolution service between affiliated CP's and DC's/consumers with the essential tracking, monitoring and reporting abilities.
- Acceleration of the implementation of an independent and technically/legally competent dispute resolution mechanism for the effective and speedy resolution of disputes between affiliated CP's and DC's/ consumers.
- Acceleration of the implementation of the Code compliance monitoring and reporting obligations of the NDMA.

Progress made with Task Team Recommendations

With the assistance of the NDMA, the credit industry made significant progress in the process enhancements to the statutory debt counselling process to provide for the consensual resolution of debt review cases within a very short timeframe. Through the NDMA, the following was achieved:

- **The standardised formats** of data and correspondence in debt counselling cases were implemented by most credit providers including all the banks and have mostly been systemised.
- **The industry made great strides forward in working together and agreeing on common solutions.** This was achieved through the formation of a joint industry forum comprising of Debt Counsellors, Credit Providers and Payment Distribution Agencies (PDA's). This joint forum was hosted on a monthly basis under the auspices of the NDMA and concerned itself with the resolution of operational debt review issues that could be utilised as voluntary guidelines;
- **The industry made a substantial contribution to the extension of the capacity of the NDMA and the Credit Ombud to mediate and adjudicate cases that could not be resolved through mediation.** This reduced the number of cases that had to be resolved through the courts making it cheaper both for the consumer and the credit provider. ***From 1 January 2011 to end May 2013 the NDMA mediated more than 6000 cases; handled more than 5500 enquiries and handled more than 40 000 calls to its helpline. The NDMA has consistently found in favour of the consumer in more than 70% of cases with an outcome.***
- **The central system (DCRS) with the agreed debt restructuring rules was developed and operationalised in record time (by March 2011), approximately four months after the Code of Conduct was finally agreed.** The industry restructuring rules represent major concessions by the credit industry where they sacrifice fees and interest in order to reduce the consumer's debt burden. Proposals based on the industry debt restructuring rules agreed to by the broader credit industry are being consented to where received. ***To date more than 60 000 applications representing more than 300000 credit agreements were processed with an average solve rate of more than 70% and reported acceptance rate of more than 80%.***
- **The development of a Central Data Switch (CDS)** which was meant to be used by all stakeholders within the debt review landscape to automate the data exchanges currently in play is well advanced. The main objective of the data switch was to increase efficiency and improve communication between participants/ users of the central data exchange; enable real-time delivery of data thus accelerating turn-around times; reduce risks and errors on

data exchanged; improve the quality of data exchanged; assist in the monitoring and collation of stats and assist with the tracking of matters.

- **Effective consumer education initiatives that reached millions of consumers were implemented.** One of the programs was implemented in collaboration with the World Bank and has been hailed internationally as an effective program that contributed to consumers changing their behaviour and managing their debt responsibly. Various tools were also developed to contribute to consumer education. Consumer education was also made possible through collaboration with various institutions including the NCR, Soul City, the World Bank, South African Savings Institute, Provincial Consumer Affairs Offices, Sector Regulators and the media.
- **Annual and quarterly reports** were published to ensure transparency regarding the work of the NDMA as well as provide statistics, case studies and other information to inform the market about challenges with the debt review process and its impact on consumers. Through these reports the NDMA called for affordability guidelines to be introduced, proper enforcement of the NCA to be implemented, the abuse of debt enforcement mechanisms to be paid attention to, additional options and remedies to resolve debt stress to be piloted and for consumer education efforts to be improved.
- **Credit provider compliance awareness workshops** were conducted nationally and awareness sessions were held with individual credit providers. Conferences and a credit summit were also held to raise the debate relating various credit related issues.

The NDMA Post withdrawal of the Section 48 Code:

Debt related financial distress has a devastating social impact on the individual concerned and their dependants/household. Both the borrowers concerned as well as the credit providers involved might or might not have contributed to the situation or unforeseen circumstances may have changed the situation of the borrower. Blame apportionment at such a point in time however serves little purpose unless the credit provider is found to have been reckless.

Approximately nine million consumers out of the 19.8 million credit active consumers in South Africa is estimated to at present suffer from a degree of debt related financial distress (are struggling to meet their monthly debt obligations). More than three million are over three months in arrears. There is currently not sufficient capacity in the market to address this problem in a holistic and rehabilitative manner without placing an undue and additional financial burden on the consumer.

NDMA cases show that reasons for this situation vary and inter alia include:

- Over-indebtedness due to having taken on/been granted debt in excess of affordability capacity;
- The abuse of debt enforcement mechanisms like emolument attachment orders, collection of prescribed debt and overcharging of debt collection fees that add an undue burden to the consumer;
- Changed family or personal circumstances that have resulted in unforeseen temporary or more permanent income and or expenditure shocks/changes such as:
  - Illness/medical expenses in the family;
  - Death of a spouse or other family member contributing to household income;

- Loss of employment of one or more people in the family/ household;
- Involuntary change in the borrower's employment status/ income;
- Rising cost of living due to increases in fuel and amenities;
- Unforeseen emergency expenses; etc.

Labour disputes are also placing stress on consumers who have to make costly alternate arrangements to get to work or are impacted through reduced income. These South Africans and their families/household members are suffering from the consequences of such financial difficulties with the accompanying embarrassment, worry and humiliation from being pursued by creditors and debt collectors. In many cases judgments and emolument attachment orders have been obtained and residual net incomes are insufficient to meet even the most basic living costs. The recent spotlight on the abuse of emolument attachment orders has highlighted how this problem can be made worse by abusive market practices.

Some incidence of debt related financial distress is inevitable as part of a functioning credit market and the NDMA has concluded that it can be strongly argued that it is incumbent on credit providers who profit from participation in that market to also take reasonable measures to mitigate the socio economic impact on consumers in the market that from time to time will be adversely affected in this manner.

The existence of an independent non-profit organization to provide preventative and rehabilitative services to consumers can ensure that the social cost to society as a consequence of debt related financial distress can be mitigated and a sustainable, socially accountable entity can catch those that cannot be serviced elsewhere and also drive change through consumer education, advocacy and research..

The present dominant one-way destructive process of civil debt litigation can through such an organization be supplemented with a rehabilitative market sustaining alternative for deserving cases that can cure the significant number of involuntary cases of distress in a developing society and economy such as South Africa with its vast economic and social inequalities.

Rehabilitating distressed borrowers:

Recent regulatory and policy developments indicate that the litigation route will be tightened and the requirements for creditors to take into consideration the consumer's financial circumstances will be stringently enforced. This is a good thing as litigation by each creditor against a delinquent (financially distressed) consumer with multiple debts is:

- Socio economically devastating for the consumer and their household;
- Costly for consumers and credit providers (who always incur parallel and duplicated costs that are mostly wasted);
- Unsustainable, as the consumer eventually has to cave in under these demands if they fundamentally no longer can afford their debts.
- Apart from destroying the borrowers as a possible future customer therefore, credit providers are wasting their money without preventing the ultimate loss in the bad debt line.

Irrespective therefore of Government expectations, there appears to be a compelling commercial and moral case for seeking a better solution. The NDMA is convinced that a holistic solution where all affected creditors and the consumer agree to a rehabilitation plan for the financially distressed borrower in accordance with standardized , fair and consistently applied rules and procedures:

- Has a much higher chance of being sustainable;
- If appropriately managed and regulated, should result in the rehabilitation of distressed borrowers rather than the present destructive one way litigation process.
- Is likely to result in higher recoveries at lower costs than available alternatives, allowing maximum recovery by all creditors and the most rapid rehabilitation term for the consumer.

What Role can the "New" NDMA play?

Over the past five years the NDMA has grown from strength to strength and has performed well in relation to the industry mandated functions within very difficult regulatory and industry dynamics. It has established itself locally and internationally as a credible and trusted mediator in the eyes of consumers, debt counsellors, government agencies, sector regulators, NGOs, academics, the media and donor agencies. This trust has been demonstrated by the continued demand for the NDMA's helpline and financial hardship solution services.

The NDMA is run by a team of dedicated individuals who are experts in debt mediation, have integrity and are motivated by the drive to serve and make a difference to consumers who approach us for assistance. The investment by the industry and by the NDMA team can therefore continue to yield positive results to the bottom lines of individuals and households who find themselves in financial difficulties.

The main form of criticism levelled against the NDMA has been that the NDMA lacks independence. While the mediation role of the NDMA was free from undue industry influence, this perception would never go away unless the NDMA took the bold step to divorce itself from perceived industry influence. This it has done by agreeing with industry that going forward, the industry will not fund the operations of the NDMA nor sit on its board. This will however not prevent industry from funding specific projects through arm's length agreements.
In designing and implementing the new services the NDMA was informed by the following principles:

- The empowerment of the consumer through the provision of independent, transparent and tailored information and solutions to address or prevent financial hardship from a behaviour change perspective;
- The preservation of the human dignity of and respect for the consumer finding him/ herself in an involuntary financially compromised situation;
- The prevention (if possible) of the recurrence of such a situation through an on-going educational rehabilitative supportive interventions to enable consumer's re-entry into the credit market in the shortest time possible;
- The highest standards of service, innovative, and sustainable solutions for the market backed up by sound business and ethical principles within a non-profit model; and
- Informed contribution to finding and shaping solutions through using its casework and research to influence policy and practice;

The business model of the NDMA has since been amended from July 2013 to allow the organization to operate independently and in terms of the new model.

The NDMA remains a not for profit organisation.

NDMA services include general credit and debt management advice, dispute resolution and assistance with developing and negotiating debt restructuring and repayment plans where consumers have experienced financial hardship due to retrenchment, maternity leave, divorce, separation and unexpected increases in expenses due to inflation, emergencies, death and illness in the family.

The information and debt mediation services offered by the NDMA revolve around the following key areas:

- National Helpline where consumers can call to ask any question related to credit and how to manage their income and expenses;
- Information on how to deal with legal action taken by credit providers including auctions and repossession of assets like cars and houses;
- Credit disputes relating to issuing of statements, interest charged, balances etc;
- Information and assistance on the legal and informal debt restructuring options that are available to consumers, including their pros and cons;
- Who to go to for help where NDMA does not have jurisdiction or is not able to assist;
- The do's and don'ts of credit usage, budgeting, and avoiding the debt spiral.

NDMA's Comments / Perspective

The applications, queries and complaints that the NDMA receives are carefully logged and we hold a substantial data base - on the cases mentioned above as well as additional casework to date - that enables us to comment on issues regarding the consumer market relating to consumer education, consumer protection, debt counselling, etc.

The NDMA expresses its best wishes to the committee in this implementation process and trust that the comments, views and experiences communicated here will be considered and will prove beneficial.

Yours faithfully,

(Signed)
Louis Reynders
Company Secretary, National Debt Mediation Association (NDMA)

General Comments and introductory statements on the National Credit Amendment Bill [B 47-2013] as introduced and referred to the Portfolio Committee on Trade and Industry:

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
Credit solutions presented by the NCA, 34 of 2005 read with the amendments proposed in the bill	Currently no real protection or so called "shock absorber" exists for financial hardship as lower income and poor consumers do not have recourse to inexpensive remedies. There is a gap in the current remedies available to consumers. Low income consumers are not serviced by debt counsellors as the cost of servicing them cannot be recouped through the current debt counselling fee model. Revising the fee model would not necessarily assist as a higher fee contributes to the consumer's debt burden.	**The remedy gap could be closed by providing suitable and cost effective alternatives to the current expensive remedies for lower income households (using specified criteria) via independent non-profit organisations on a subsidised charity basis. Section 6.13 of the Consumer Credit Law Reform Policy Framework (August 2004) recommended that a funding model should be developed to ensure that these services are provided to consumers on a large scale. Most countries have created a network of non-profit entities that are government funded to ensure consumers have access nationally. The restriction of a credit provider contributing to funding this process should be lifted. A portion of levies paid to the Regulator should be set aside to fund non-profit NGOs who provide these services. Guidelines how to assist consumers suffering because of hardship must be formulated.**
Comments on research and contributions by the public.	The call here is for an objective approach and a balanced assessment of all the comments submitted. Since research reports and comments made by the public have not been made available it is difficult to determine on what the proposed amendments and omitted material are based. Considerations should be done by way of factual analysis of viewpoints and possibilities of vested interests should be weighed properly. It is important that the amendments are based on proper and independent research.	**Assessment processes should be transparent, consultative and based on good governance practices. The reports, comments and all research should be made public and should be made available.**
The role of the NCR in research and consumer protection	The current statistics issued by the NCR does not facilitate a deeper understanding of the drivers of consumer behaviour as well as trends and demographics to ensure understanding and proper design of interventions. NDMA case studies show that consumers have basic awareness which requires supplementation when they enter into	**The NCR should be required to invest in providing a more in depth analysis of the aggregate statistics. E.g. Age, gender, geographical breakdown, reasons for over indebtedness etc.** **In addition to creating high level awareness consumers need somewhere to go to get more detailed and neutral advice. The Regulator does not suit the profile of an ideal solution**

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
	agreements, have to deal with disputes or engage in negotiations with credit providers. Balanced rights and responsibilities for all stakeholders: S129 exclusions (although a CP right) causes the intended impact of debt review to fail as a holistic financial solution is not possible and may exclude a consumer from the process. Termination rights results in unfair treatment of consumers and the effort to rectify makes the process expensive and inefficient with little protection for consumers under debt review.	**and this is the reason why section 48 was a perfect space for the credit industry to make a contribution. If there are concerns about independence of funded solution agencies, these contributions can be channelled through the regulator and distributed to agencies that assist consumers.** **A National Consumer help line should service all stakeholder needs. It will facilitate continued focused public attention.**
Addressing Over-Indebtedness	The conclusion that debt counselling has worked but for a few cannot be accepted. While 363 000 have applied less than 120 000 are active while most have been rejected, terminated or voluntarily withdrawn from the process. The reasons for the huge fallout rate and less than 3% take up needs proper investigation. Consumers do not trust nor believe that the process provides relief as it has actually, in most instances increased their debt burden when the assessment and restructuring fees, PDA fees, after care and court fees are added together. The remedies available should be reviewed and revamped to make it more affordable, simpler and properly remedial. Most developed countries have gone for informal out of court mechanisms as courts are expensive and slow. Most countries provide general guidelines to industry on how to proceed with informal out of court settlements. It is not true that a court order fully protects the consumer as only one missed payment can lead to termination of debt review. Approximately nine million consumers out of the 19.8 million credit active consumers in South Africa is estimated to at present suffer from a degree of debt related	• **There should be criteria as to who should enter debt review. The current definition of over indebtedness is too broad and incentivises debt counsellors to accept consumers who have no hope of rehabilitating under debt review. Criteria could be based on stage of delinquency (60 days in arrears), reasons for default, number or value of credit agreements, available affordability to service restructured agreements and ability to rehabilitate within a specific period of time** • **Section 86(7)(b) should be made the compulsory first step in the debt review process, where a consumer and credit provider either on their own or through a debt counsellor can enter into a regulated informal arrangement. If there is consent the agreement should be binding on the consumer and credit provider and there should be a restriction for the credit provider to take legal action where the consumer is paying according to agreement.** • **Section 86(7)(c) should only apply if consumer and credit provider could not reach an agreement in terms of section 86(7)(b) after a specified period of time and this matter should go to the Tribunal instead of court.** • **The costs of the process should be shared**

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	financial distress (are struggling to meet their monthly debt obligations). More than three million are over three months in arrears. There is currently not sufficient capacity in the market to address this problem in a holistic and rehabilitative manner without placing an undue and additional financial burden on the consumer. NDMA cases show that reasons for this situation vary and inter alia include: • Over-indebtedness due to having taken on/been granted debt in excess of affordability capacity; • The abuse of debt enforcement mechanisms like emolument attachment orders, collection of prescribed debt and overcharging of debt collection fees that add an undue burden to the consumer; • Changed family or personal circumstances that have resulted in unforeseen temporary or more permanent income and or expenditure shocks/changes such as: ➢ Illness/medical expenses in the family; ➢ Death of a spouse or other family member contributing to household income; ➢ Loss of employment of one or more people in the family/ household; ➢ Involuntary change in the borrower's employment status/ income; ➢ Rising cost of living due to increases in fuel and amenities; ➢ Unforeseen emergency expenses; etc. Some incidence of debt related financial distress is inevitable as part of a functioning credit market and the NDMA has concluded that it can be strongly argued that it is incumbent on credit providers who profit from participation in that market to also take reasonable measures to mitigate the socio economic impact on consumers in the	**by the consumer and credit provider.** • **Credit Providers should be required to report on the informal arrangements if facilitated directly between them and consumer.** • **Long overdue guidelines in process of being established and should be agreed and implemented as a priority as it will provide some guidance when determining reckless credit and create some generic basis for industry.**

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	market that from time to time will be adversely affected in this manner. No affordability guidelines were provided A report by Genesis Analytics indicates that in South Africa, a consumer in default is likely to enter either a Product Level Collection (PLC) process (where the focus is to bring a consumer up to date on a particular credit agreement) which may lead to legal action, and/or the statutory debt review process (where the focus is rehabilitation). While most credit providers have begun to make significant efforts in the PLC process to help many consumers bring their payments up to date and avoid legal action, the nature of the PLC process can prevent the rehabilitation of those consumers that are over-indebted and have multiple credit agreements (as is most often the case). This is largely because in the PLC process any new arrangement does not take into account the consumers other credit agreements, and in not doing so, fails to address the structural level of over-indebtedness.	
Addressing ineffective and inefficient Legislative Provisions	The Sebola Constitutional case has demonstrated that the practical problems are even beyond the consumer or credit provider's control. The ruling also signals the need for credit providers to change how they deal with consumers experiencing payment difficulties. The ruling is very clear that the intention of the NCA was to have a consensual process before formal litigation.	**Guidelines like affordability guidelines and other guidelines will not resolve certain matters. Guidelines cannot be more than ONLY GUIDELINES and MINIMUM MEASURES should be considered.** **If reckless is prevented AT ALL COSTS, the result thereof will again be unintentional consequences. Freedom of choice of the consumer should weigh up, and the understanding factor for determining reckless should be addressed. If a debt counsellor for example determines affordability and understanding is OK in questionable cases where a consumer (not in debt counselling) applies for credit, it should be considered as merit to grant credit. This counsellor certification then serves to "certify" that at the time the consumer understood the implications of the agreement. Exclusion should only apply where summons have been issued.**
Enhancing the NCR	The NCR has adequate enforcement powers	**Any powers given to the regulator should be in**

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
Enforcement Framework	which have not been properly carried out due to capacity constraints and an unwillingness to follow the prescripts of the legislation	**line with the constitution and other relevant laws like fair administration of justice.**
National Consumer Tribunal (NCT)	The NDMA agrees that the mandate and practical functioning of the NCT should be enhanced. Section 86(7)(b)-(c) should be mandate of NCT, with or without consent. The NDMA further agrees that the recourse to the NCT can be cost-effective and time saving.	**With the NCT assisting as an adjudication body, the activities should be taken down to provincial level.** **NCT should be able to confirm all consent orders**
Industry Participation and the role of the NCR	Codes are self-regulatory mechanisms implemented successfully worldwide, adding good reputational value to participants and ensuring that industry contributes to addressing some of the negative consequences of credit provision and consumption. Through the section 48 process industry contributed more than a R100 million to ensuring that the debt review process was improved, consumers had access to a national helpline and debt review disputes were handled effectively. The helpline handled more than 40 000 calls and dealt with more than 12 000 enquires and cases. Government should embrace industry participation and contribution as it is know that the fiscus has limited resources. This is one of the successes of the NCA but unfortunately due to lack of proper policy guidelines there were different interpretations by different regulators of how industry should contribute. The NCA as it stands states in section 48 that the NCR may consider certain aspects, granting the NCR discretionary rights. This is regarded as adequate discretionary powers. Self-regulation should be a pre-requisite and to do that successfully an implementation institution is necessary. To do this in a sustainable way, this institution should be funded for example by means of a mandatory levy contributed by industry stakeholders. The NCR should be compelled	**The Industry Code provisions contained in section 48 of the NCA should be aligned with those contained in section 82 of the Consumer Protection Act. This will ensure that industry codes are independent and transparent and have the required approval at the highest level.** **Balance should be struck between enforcement and facilitating innovation and problem solving by industry. The Regulator should have the capacity to engage constructively with industry to solve problems that the Act cannot solve. This is important as it takes a long time to amend legislation and positive engagement can ensure that issues are addressed quickly.**

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
	to participate and report regarding this functionality. "positive industry participation" to be clearly defined so that industry and the regulator have clear guidelines of what is expected without limiting industry's ability to innovate. The Task Team process was a good example of industry working together with the regulator to solve problems. The regulator was consulted on all industry initiatives but did not have the capacity to understand the issues and therefore engage properly. There was therefore no intention to circumvent the law as there was consultation but no proper response. Various investigations and research projects were done on this. The TTR intended to solve this problem and to great extent succeeded before the NCR made these real solutions redundant without a proper analysis and explanation to the market of what the real concerns are. It was defined by agreements and regulated by the NDMA as implementing mechanism. The NCR was required to participate in certain processes to make this work, and the NCR did not participate the way it should have.	
Clarity of roles in Dispute Resolution	Section 129 made provision for debt mediation as a consumer could approach an ADR agent to negotiate debt restructuring for agreements where section 129 was issued. Debt mediation also covered instances where a consumer was terminated from debt review and needed to: • negotiate a different solution for example to stop a sale in execution or repossession and arrange for arrears to be settled • make an arrangement where a property was sold and the consumer	**ADR's range from attorneys, NGOs, University Law clinics, individuals and private companies. The requirement to register might create an unnecessary administrative burden on the regulator and proposed registrants. Most of these entities fall under the definition of "supplier" in the CPA and are regulated in that legislation.** **A role for debt mediation/ADR where legal action has commenced OR a matter has been correctly terminated OR excluded from debt review OR a consumer opts into the process has a positive role to play in providing access**

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
	cannot afford a lump sum to settle the shortfall • Negotiate with attorney where the debt was handed over or sold to a third party In the above instance a debt counsellor has no role to play and the consumer has to have an attorney to deal with the matter. Most consumers cannot afford an attorney and debt mediation assisted in this regard. As these are not complaints or dispute the Ombud also do not get involved unless the credit provider did not follow the correct legal procedure. Where the credit provider followed correct action the process involves developing an income and expenditure document and assisting the consumer to negotiate the settlement of arrears. The Department of Justice has come to recognise that mediation can play a positive role in these instances. The Department of Justice's policy and guidelines in this regard should be taken into consideration. One of the fundamental rights of a consumer is the right to choose. Consumers might for various reasons choose not to go under debt review due its implications for their personal or professional lives. They can therefore choose to go the informal route with their creditors either directly or through an intermediary. This right should not be taken away as long as the consumer understands the implications of such a route. Many consumers have also opted to voluntarily withdraw from debt review and negotiate directly with their creditors. Guidelines should be provided where consumers choose this option. The issue of the Credit Ombudsman is not an issue of the law or policy not being clear.	**to redress or assistance for a consumer. Instead of killing this process proper guidelines should be provided. These guidelines should cover:** • **Skills and knowledge** • **Advertising and disclosure** • **Fees and charges** • **Service Standards** • **Contracting and cancellations** • **Disputes or complaints against ADR agents** • **Reporting** **Section 70 of the consumer protection Act facilitates access to redress by putting all entities under the ADR umbrella. This is important as Ombuds are not necessarily accessible to all consumers. The NCA provisions should be aligned to the CPA where disputes and complaints are concerned.**

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	There was a negotiated mandate extension between the regulator and the Ombud in order to address a specific gap in the market. Section 134 is ambiguous and not well understood. It is difficult for consumers to understand to which ombud they must go for assistance. The section also curtails the role that NGOs and provincial courts can play due to the differentiation of financial and non-financial institutions. NGOs and provincial (consumer) courts should be able to deal with any matter irrespective of whether the entity is a financial institution or not. The DC has a statutory obligation that forces him to act in a certain way. Being an ADR does not oblige the person assisting the consumer to perform certain actions. The informal nature of the ADR process makes it more likely for the consumer to utilise this method early enough to resolve debt problems directly with credit providers at a lessor cost. ADR should be seen as the intervention of any third party to resolve a situation at the choice of the consumer. This furthers the idea to reduce the possibility of matters taken to court as intended by DoJ. Certain functions of debt counsellors are reserved in terms of the current act. Only the debt counsellor must obtain a court order for consent agreements. The ADR does not carry this burden but this does not prevent them from securing binding agreements. If the policy and legislation should define and provide for the functions and duties of ADR agents, this will exclude certain obvious ADR solutions that benefit the consumer.	
Payment Distribution Agencies	Consumers should enjoy protection against actions by credit providers where the consumer paid money to the PDA, but it has	**A consumer should be able to choose whether they want to carry the additional cost and risk of paying through a PDA.**

SUBJECT	NDMA COMMENTS	NDMA RECOMMENDATION
	not been paid to the credit provider, and the credit provider subsequently repossesses the car or house or takes legal actions that cause further problems for the consumer. The fact that the PDA's were largely not regulated and that there has been non-compliance to this requirement had a further snowball effect. The time, effort and cost of taking a matter to court are prohibitive both for the consumer and credit provider.	**The Debt Counsellor should be able to distribute funds if they meet certain criteria.** **The consumer should be able to opt to pay through other agreed and secure mechanism if it is convenient and cheaper for them** **PDAs should be regulated and be required to carry the liability for payments not reaching the credit provider on time or not at all leading to legal action and loss of assets for the consumer.** **Stricter PDA regulation, enforced compliance and shorter holding periods before funds are paid over/efficient resources for PDA's to claim refunds.**
Lack of Enforcement and Redress	The capacity of the enforcement entity should be reconsidered rather than the inadequacy of enforcement provisions.	**Current measures do not adequately address the issue of access to redress. Sanctions and penalties for the credit providers might have a deterring effect rather than restoration for the consumer in the form of a refund or other forms of redress. Access to redress also talks to the capacity of institutions to effectively deal with consumer complaints. There should be improved reporting guidelines for the regulator to report on the type, number, turnaround time and findings of complaints. This will ensure accountability. Ombuds and other ADRs report in this fashion.** **The Tribunal should also be made easily accessible to consumers instead of relying on the regulator to refer cases.**
Collection methods	Emolument attachment order problems should be addressed at the cause. Sales of debts to third parties are the main cause of irregularities by third parties that bought debtors book and should be redressed in an appropriate way. Harassment of consumers after debt has prescribed should also be addressed, and not only the 103(5) in duplum scenario. Garnishees / emolument attachment orders and the debit order alternatives are being	**There should be a restriction on selling debtor's books to third party collectors and third party collectors should be restricted from engaging in various unfair practices which includes misleading communication, harassment, collecting prescribed debt, double listing at bureaus and garnishing without conducting a proper affordability assessment, pre signing consent to judgment, abusing NCA voluntary surrender provisions etc.** **The various Acts should be aligned and an**

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	investigated by the industry project team. Salary deductions are still being done to pay creditors according to the "group schemes' principles, for example IEMAS. Is this not a type of preferred deduction that the NCA attempted to prevent?	**inter-departmental / Regulatory Task Team should be established to coordinate and monitor contraventions.**
Consumer Education	Government needs to sponsor non-profit organisations (could be done through for example the lottery) that exists for the benefit of the consumer, or the legislator should raise a levy against credit providers to fund the operations of such organisations. It has been widely reported that consumers do not want to interact directly with credit providers, and it is generally well known that credit providers force non-solving payment arrangements that results in further problems for the consumer.	**Portion of registration levy to be set aside for NGOs to access consumer education funding. This fund should be administered by the dti.**
Charges for Credit and other Services	Costs should be linked to a market related mechanism that updates automatically, for example to the publish VPIX percentage for escalation each year.	**Costs should be linked to a market related mechanism that updates automatically, for example to the published VPIX percentage for escalation each year, and a variation or limiting factor could be provided for through for example a publication by the minister.**
Credit Life Insurance	There is no proper disclosure with regards to costs, instances covered and claiming procedures	• **Stricter regulation of costs and disclosure required**
Industry involvement and less costly time saving credit solutions for consumers	With the above challenges in mind the credit industry attempted to pilot a voluntary debt mediation service that was intended to offer a more structured, holistic and sustainable solution for consumers who are more than 60 days behind with their repayments and who as a result face legal action. Unfortunately this process was stopped by the NCR on the basis that some aspects of the project would contravene the National Credit Act without the opportunity to re-engineer and align to the NCR's requirements. While some hailed this finding as a victory for consumers, the number of consumers who are subjected to legal action or with adverse listings continues to grow with no alternative	• **There should be a regulated out of court settlement procedure that can be handled by the Tribunal** • **The credit provider should share the costs with the consumer** • **All agreements in default and where legal action is commenced but there is no court decision and there is sufficient affordability should be included** • **Where an informal agreement to restructure is done there should be a requirement in the Act for the agreement to be binding if parties meet certain conditions.** • **The NCT should be able to hear cases and make appropriate orders where voluntary agreements were allegedly breached.**

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	mechanisms in place to resolve them. This demonstrates that there is still a need to develop and introduce additional solutions to assist consumers experiencing payment difficulties. The recent reports relating to the abuses of emolument attachment orders as well as reports that more than 9 million consumers are experiencing payments difficulties also support the need for alternative and innovative solutions to address over indebtedness. While much has been done to improve the formal debt review process, millions of consumers still do not have access to additional options where they are legally excluded from debt review or out of choice opt out of the process.	

Comments on National Credit Amendment Bill –

We would like to thank the dti and all other concerned parties that developed this bill for acknowledging some of our comments and recommendations including those to extend the mandate and the role of the NCT and we would further recommend as stated earlier that the NCT should even play a more pertinent role to assist consumers.

BILL PROPOSAL	NDMA COMMENTS	RECOMMENDATION
Amendment of section 1 of Act 34 of 2005 **Section 1** of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended— *(a)* by the deletion of paragraph *(d)* in the definition of 'lease'; *(b)* by the substitution for the definition of "mortgage" of the following definition: " **'mortgage'** means **[a pledge of immovable property]** security for a secured loan that the credit provider makes to a borrower that serves as security for a mortgage agreement;"; *(c)* by the substitution for the	(a) Lease - Agree, the inclusion of rentals have been a problematic area of interpretation. At present all rentals will be included, and uncertainties are eliminated. Some forms of finance provided to consumers disguised as rentals previously have now been dealt with. (b) Mortgage - Care should be exercised not to confuse "mortgage" and "secured loans".	Define "mortgage" and "secured loans" not to be ambiguous.

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definition of "mortgage agreement" of the following definition: " **'mortgage agreement'** means a credit agreement that is secured by **[a pledge of immovable property]** the registration of a mortgage bond by the registrar of deeds over immovable property; and *(d)* by the substitution in the definition of "secured loan" for paragraph *(b)* of the following paragraph: "*(b)* retains, or receives a pledge **[or cession of the title]** to any **[movable]** property or other thing of value as security for all amounts due under that agreement.".		
Amendment of section 17 of Act 34 of 2005 **Section 17** of the principal Act is hereby amended— *(a)* by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words: "The National Credit Regulator **[may]** must—"; *(b)* by the substitution in subsection (4)*(b)* for the words preceding subparagraph (i) of the following words: "*(b)* **[negotiate agreements]** enter into a valid agreement with any regulatory authority to—"; *(c)* by the deletion in subsection (4) of the word "and" at the end of paragraph *(c)*; *(d)* by the insertion in subsection (4) of the word "and" at the end of paragraph *(d)*; *(e)* by the addition in subsection (4) of the following paragraph: "*(e)* notify the Registrar of Banks designated in terms of the Banks Act, 1990 (Act No. 94 of 1990), within the agreed time frame,	Agreed	

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of its intention to investigate a bank as defined in the Banks Act, 1990."; and *(f)* by the substitution in subsection (5) for paragraph *(a)* of the following paragraph: "*(a)* **[may negotiate agreements]** must enter into a valid agreement with the National Credit Regulator, as anticipated in subsection **[4]**(4)*(b)*; and".		
Amendment of section 25 of Act 34 of 2005 **Section 25** of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "The Chief Executive Officer or any official duly authorised by the Chief Executive Officer—".	This appointment must be placed on record before any actions by the alternative official to appoint an inspector. If done this way it will add value to the credibility and reputation of the inspector appointed and the inspection process itself. Reasons and causes for inspections should be disclosed fully and with transparency to all concerned before the investigation commences, except where criminal actions are being investigated. An investigation should allow response from the party being investigated on initial reported findings by the investigator.	
Substitution of section 34 of Act 34 of 2005 **4.** The following section is hereby substituted for section 34 of the principal Act: "**Remuneration and benefits** **34.** (1) The Minister may, in consultation with the Minister of Finance, determine salary, allowances, benefits or any other terms and conditions of employment for members of the Tribunal. (2) The salary, allowances or benefits of a member of the Tribunal may not be reduced during the term of office of such a member.".	Agreed	
Insertion of section 44A in Act 34 of 2005 **5.** The following section is hereby inserted in the	An agreement to be a PDA should not be left to an agreement between the NCR and the PDA, obligations and certain key elements should be	**Define "PDA"** **Publish regulations to govern**

BILL PROPOSAL	NDMA COMMENTS	RECOMMENDATION
principal Act after section 44: "**Registration of payment distribution agents** **44A.** (1) A natural or juristic person may apply to the National Credit Regulator to be registered as a payment distribution agent. (2) A person must not offer or engage in the services of a payment distribution agent, or hold themselves out to the public as being authorised to offer any such service, unless that person is registered as a payment distribution agent in terms of this Chapter. (3) In addition to the requirements of section 46, an applicant for registration as a payment distribution agent must satisfy any prescribed education, experience or competency requirements.".	described as content of the Act, for example requirements regarding trust accounts, fidelity insurance, regulations regarding charges allowed, audit procedures, minimum standards etc.	**activities – prevent the occurrence of admin order scenarios**
Amendment of section 45 of Act 34 of 2005 **6.** Section 45 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection: "(3) If an application complies with the provisions of this Act and the applicant meets the criteria set out in this Act for registration, the National Credit Regulator, after considering the application, must register the applicant [,] subject to section 48 unless the National Credit Regulator— *(a)* after subjecting the applicant to a probity test or any other prescribed test; or *(b)* upon investigations, is of the view that there are other compelling grounds that disqualify the applicant and which render such an applicant not to be a fit and proper person to be	This will again leave the NCR with too many discretionary powers. Fit and proper should be defined and should not be left for the NCR to decide based on a NCR persons' discretion. This leaves too much for leeway for things attached to a personality as personal preferences of a person having to decide about fit and proper. Acceptable is normally judges in the high court that judges fit and proper based on certain criteria determined as requirements by court rules. This is a HIGHER level of decision to be made. Fit and proper is normally decided upon by weighing for example evidence of behaviour and personal history. If we want to give people amnesty for a bad credit history, how will it be possible to apply these types of criteria objectively if the person had a bad credit record which no longer exists because of the amnesty? Is this person now suddenly fit and proper whilst debts were not paid - surely NOT.	**Define minimum requirements for "fit and proper" because the principle is not applied by a (neutral and objective) court.**

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registered in terms of this Act.".		
Amendment of section 46 of Act 34 of 2005 **7.** Section 46 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: "(2) A natural person may not be registered as a credit provider, debt counsellor or payment distribution agent if that person is an unrehabilitated insolvent.".	Agreed	
Amendment of section 48 of Act 34 of 2005 **8.** Section 48 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(b)* of the following paragraph: "*(b)* the commitments, if any, made by the applicant or any associated person in connection with combating over-indebtedness [, **including whether the applicant or any associated person has subscribed to any relevant industry code of conduct approved by a regulator or regulatory authority**] or compliance with a prescribed code of conduct or a guideline including but not limited to an affordability assessment guideline prescribed by the Minister after consultation with the National Credit Regulator; and".	Compliance is not yet possible as no guidelines have been issued to date – only comments were submitted. Some indication should exist that there needs to be consultation as part of a fair issue and review process. Codes are normally self-regulated mechanisms within an industry. The code is a mechanism that enforces self-regulation within an industry committed to it. These could be equated to statutory regulations. A regulator manufacturing a code does no less no more than fabricating sub-standards that are not enforceable. Non-compliance to this must be tested on courts? A court will not rule on a code, neither will the NCT be able to do that, except where it relates to application for registration. An industry body will be able to enforce a code, given that the body has a complaint and disciplinary codes in place, but the NCR is of the opinion that the NCR can enforce a NCR manufactured code successfully which is factually less possible than ensuring compliance to the previous industry code. Although the NCA states that guidelines are non-binding, this amendment will override the non-binding principle. Again, this clause creates too much power in the hand of the regulator that the legislator surely never envisaged.	**Section 48 should be aligned with section 82 of the NCA.** **Codes of conduct should be part of an implementation agency responsibilities created for purpose of overview and compliance.**

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Amendment of section 49 of Act 34 of 2005 **9.** Section 49 of the principal Act is hereby amended— *(a)* by the deletion in subsection (1) of the word "or" at the end of paragraph *(c)*; *(b)* by the insertion in subsection (1) of the word "or" at the end of paragraph *(d)*; and *(c)* by the addition in subsection (1) of the following paragraph: "*(e)* if the National Credit Regulator, on compelling grounds, deems it necessary for the attainment of the purposes of this Act and efficient enforcement of its functions.".	Change the wording as this seems to give the NCR ultimate power, despite the clear definition of review of registration (covered elsewhere), to at any time add or impose new registration requirements does not seem appropriate. Again it is left open for different interpretation under same circumstances, and the NCR is given too much power. This may unnecessary give rise to inconsistencies, appeals and bullying. This constant threat will further cause unnecessary constant stress and strain for businesses under already difficult economical circumstances. Measures already exist to address non-compliance; the NCR must just apply the existing mechanisms.	**There should be a consultation process or some mechanism to ensure a fair process is followed.** **Amendments required must be subjected to high court level objective adjudication and possible appeal, taking into account all circumstances.** **Any change in business required should allow a transitional period.**
Amendment of section 51 of Act 34 of 2005 **10.** Section 51 of the principal Act is hereby amended— *(a)* by the deletion in subsection (1) of the word "and" at the end of paragraph *(b)*; *(b)* by the insertion in subsection (1) of the word "and" at the end of paragraph *(c)*; and *(c)* by the addition in subsection (1) of the following paragraph: "*(d)* a penalty fee for late renewal of registration by registrants which shall be imposed by the National Credit Regulator on a registrant that fails to renew its registration within the specified time period".		**A registration renewal reminder system should be implemented**
Insertion of section 58A in Act 34 of 2005 **11.** The following section is hereby inserted in the	Notification should be sent to the NCR complaints department and ADR's where a matter is under investigation with either of these parties.	**The date from which the transfer is applicable needs to be specified and some kind of**

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principal Act after section 58: "**Additional requirements for voluntary cancellations** **58A.** (1) A debt counsellor who voluntarily requests that his or her registration be cancelled must— *(a)* submit a notice in the prescribed manner and form, and an affidavit to the National Credit Regulator, stating— (i) the debt counsellor's intention to voluntarily cancel his or her registration; (ii) reasons for such cancellation; and (iii) the date on which the cancellation shall take effect; *(b)* attach to the said notice proof that all the affected consumers, credit providers and all credit bureaus have been notified about the intended cancellation; *(c)* attach to the said notice the registration certificate issued to that debt counsellor by the National Credit Regulator; and *(d)* submit an affidavit to the National Credit Regulator, advising the National Credit Regulator that the consumers referred to in paragraph *(b)* have been transferred to another registered debt counsellor. (2) A debt counsellor whose registration has been cancelled in accordance with this section must, in the prescribed manner and form, notify in writing all affected— (i) consumers; (ii) credit bureaus; and (iii) credit providers, of his or her deregistration. (3) A credit provider who voluntarily requests that his	Transfer should not only automatically take place to another registered DC. The new DC should be subject to certain criteria, for example the DC should actively be practicing and should not be under review or at risk of being de-registered. Credit providers that deregister and curators should be bound to notify or publicly announce for example via specified notification in the press, and all stakeholders should be notified.	**acceptance notice/letter from the DC transferred to, accepting responsibility for the consumer, should be sent.** **Add stakeholders who may be involved in the process, for example PDA's, etc.**

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or her registration be cancelled shall, in the prescribed manner and form, submit a cancellation notice to the National Credit Regulator accompanied by— *(a)* the registration certificate that was issued to that credit provider; and *(b)* an affidavit from the accounting officer, auditor or authority of such credit provider, confirming that the registered activities have seized". **Amendment of section 71 of Act 34 of 2005** **12.** Section 71 of the principal Act is hereby amended— *(a)* by the substitution for subsection (1) of the following subsection: "(1) A consumer whose debts have been re-arranged in terms of Part D of this Chapter,**[may apply to a debt counsellor at any time for a clearance certificate relating to that debt re-arrangement]** must be issued with a clearance certificate by a debt counsellor within seven days after the consumer has— *(a)* satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or *(b)* demonstrated financial ability to satisfy every current obligation under every credit agreement."; *(b)* by the deletion of subsection (2); *(c)* by the substitution for subsection (3) of the following subsection: "(3) If a debt counsellor **[refuses]** decides not to issue a clearance certificate or fails to issue a clearance certificate	It is important that certainty should be created in the process, and check and balances should be maintained. Obligations under credit agreements may no longer be current, and it should be described in 71(1)(b) as "monthly original contractual obligations" and not "monthly current obligations". A more practical approach may be to create a possibility of rehabilitation only after all unsecured debts have been settled.	**In S71(1) – (add underlined) .. within seven days after <u>confirmation that</u> the consumer has- ..** **Clearance certificate may only be issued after reconciliation of the actual payments made with the obligations content of the order made originally**

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as contemplated in subsection **[(2)*(b)*(i)]** (1), the consumer may apply to the Tribunal to review that decision, and if the Tribunal is satisfied that the consumer is entitled to the certificate in terms of subsection **[(2)*(b)*(i)]** (1), the Tribunal may order the debt counsellor to issue a clearance certificate to the consumer."; and *(d)* by the substitution for subsection (4) of the following subsection: "(4) *(a)* A **[consumer to whom a clearance certificate is issued in terms of this section may]** debt counsellor must within seven days after the issuance of the clearance certificate file a certified copy of that certificate with the national register established in terms of section 69 or any credit bureau. *(b)* If the debt counsellor fails to file a certified copy of a clearance certificate as contemplated in subsection (1), a consumer may file a certified copy of such certificate with the National Credit Regulator and lodge a complaint against such debt counsellor with the National Credit Regulator.".		
Insertion of section 71A of Act 34 of 2005 **13.** The following section is hereby inserted in the principal Act after section 71: **"Automatic removal of consumer credit information 71A.** (1) The credit provider must submit to the credit bureau within seven days after settlement by a consumer of any obligation under any credit agreement, information regarding such	The removal of credit information history creates serious problems to determine the probability whether consumers will pay their debts or not. Payment history proved to be a valuable factor to determine whether future payments will be made. This enables credit providers to make credit readily available to consumers in a responsible way. To remove this mechanism removes certain mechanisms acknowledged within the NCA, and is irresponsible. This will as unintended consequences create legal actions just to maintain certain records and to prevent difficult payers to get loans at a low cost, and make	**A minimum rehabilitation period should be allowed before a consumer's negative credit records are removed. This period has been accepted as three years in the market as confirmed in the current regulations.** **Add underlined to 71A(1)** **.. Within seven days after <u>confirmation of</u> settlement ..**

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settlement where an obligation under such credit agreement was the subject of— *(a)* an adverse classification of consumer behaviour; *(b)* an adverse classification enforcement action against a consumer; or *(c)* a payment profile listed in the consumer credit payment profile. (2) The credit bureau must remove any adverse listing contemplated in subsection (1) within seven days after receipt of such information from the credit provider. (3) If the credit provider fails to submit information regarding a settlement as contemplated in subsection (1), a consumer may lodge a complaint against such credit provider with the National Credit Regulator. (4) For the purposes of this section— *(a)* **'adverse classification of consumer behaviour'** means classification relating to consumer behaviour and includes a classification such as "delinquent", "default", "slow paying", "absconded", or "not contactable"; and *(b)* **'adverse classification of enforcement action'** means classification relating to enforcement action taken by the credit provider, including a classification such as "handed over for collection or recovery", "legal action", or "write-off".	access to credit more difficult. The definition of reckless will have to be revised if these proposed changes in the bill remain. The time period will be very difficult to adhere to in practise. Settlement must be regarded as a period after confirmation of payments within the National Payment System.	
Amendment of section 73 of Act 34 of 2005 **14.** Section 73 of the principal Act is hereby amended— *(a)* by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words:	Please see previous comments	

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"The Minister **[must, within a period of six months after the effective date,]** may, at any time prescribe—"; *(b)* by the deletion in subsection (1) of the word "and" at the end of paragraph *(a)*; *(c)* by the insertion in subsection (1) after paragraph *(a)* of the following paragraph: "*(aA)* the manner in which a registered auditor may confirm that the consumer credit information referred to in paragraph *(a)* has been reviewed, verified, corrected or removed; and"; and *(d)* by the substitution in subsection (1) for paragraph *(b)* of the following paragraph: "*(b)* the time-frame and schedule for the exercise by the consumers of their rights in terms of section 72 (1) **[, within a period of one year after the regulations being promulgated]**."; **Amendment of section 82 of Act 34 of 2005** **15.** Section 82 of the principal Act is hereby amended— *(a)* by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words: "The Minister, in consultation with the National Credit Regulator may—"; and *(b)* by the substitution in subsection (2) for paragraph *(b)* of the following paragraph: "*(b)* publish guidelines proposing evaluative mechanisms, models and procedures to be used in terms of section 81 and any other guidelines related	Agreed	

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thereto, applicable to **[other]** credit agreements.".		
Amendment of section 83 of Act 34 of 2005 **16.** Section 83 of the principal Act is hereby amended— *(a)* by the substitution for the heading of the following heading: "**[Court may suspend reckless credit agreement]** Declaration of reckless credit agreement"; *(b)* by the substitution for subsection (1) of the following subsection: "(1) 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 the credit agreement is reckless, as determined in accordance with this Part."; *(c)* by the substitution in subsection (2) for the words preceding paragraph *(a)* of the following words: "If a court or Tribunal declares that a credit agreement is reckless in terms of section 80(1)*(a)* or 80*(l)(b)*(i), the court or Tribunal, as the case may be, may make an order— "; *(d)* by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words: "If a court or Tribunal, as the case may be, declares that a credit agreement is reckless in terms of section 80(1)*(b)*(ii), the court or Tribunal, as the case may be—";	Agreed	**Tribunal should be afforded the transitional opportunity to facilitate and adopt these changes.**

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(e) by the substitution in subsection (3) for paragraph *(a)* of the following paragraph: "*(a)* must further consider whether the consumer is over-indebted at the time of those **[court]** proceedings; and"; *(f)* by the substitution in subsection (3) for the words preceding subparagraph (i) of paragraph *(b)* of the following words: "if the court or Tribunal, as the case may be, concludes that the consumer is over-indebted, the said court or Tribunal may make an order—"; and *(g)* by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words: "Before making an order in terms of subsection (3), the court or Tribunal, as the case may be, must consider—".		
Amendment of section 86 of Act 34 of 2005 **17.** Section 86 of the principal Act is hereby amended— *(a)* by the substitution for subsection (2) of the following subsection: "(2)An application in terms of this section may not be made in respect of, and does not apply to, a particular credit agreement if, at the time of that application, the credit provider under that credit agreement has proceeded to take the steps contemplated in section **[129]** 130 to enforce that agreement."; and *(b)* by the substitution for subsections (10) and (11) of	Agree – this will amend the section as intended to afford the consumer the protection intended by the legislator initially and correct the erroneously numbers as has been advocated by senior academics and other senior legal authors.	

BILL PROPOSAL	NDMA COMMENTS	RECOMMENDATION
the following subsections, respectively: "(10) *(a)* If a consumer is in default under a credit agreement that is being reviewed in terms of this section, the credit provider in respect of that credit agreement may, at any time at least 60 business days after the date on which the consumer applied for the debt review, give notice to terminate the review in the prescribed manner to— *(a)* the consumer; *(b)* the debt counsellor; and *(c)* the National Credit Regulator **[,at any time at least 60 business days after the date on which the consumer applied for the debt review]**. *(b)* No credit provider may terminate a review contemplated in paragraph *(a)* if such review is filed in court as contemplated in section 87. (11) If a credit provider who has given notice to terminate a review as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the **[Magistrate's Court]** court hearing the matter may order that the debt review resume on any conditions the court considers to be just in the circumstances.".		
Amendment of section 89 of Act 34 of 2005 **18.** Section 89 of the principal Act is hereby amended— *(a)* by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:	Agreed – this is according to the Constitutional ruling in the Opperman case as described in the NDMA 2012 Fourth Quarterly Report.	

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"If a credit agreement is unlawful in terms of this section, despite **[any provision of common law,]** any other legislation or any provision of an agreement to the contrary, a court must make a just and equitable order including but not limited to an order that—"; and *(b)* by the deletion in subsection (5) of paragraphs *(b)* and *(c)*.		
Substitution of section 91 of Act 34 of 2005 **19.** The following section is hereby substituted for section 91 of the principal Act: **"Prohibition of unlawful provisions in credit agreements and supplementary agreements** **91.** (1)Acredit provider must not directly or indirectly, by false pretence or with the intent to defraud, offer, require or induce a consumer to enter into or sign a credit agreement that contains an unlawful provision as contemplated in section 90. (2) A credit provider must not directly or indirectly require or induce a consumer to enter into a supplementary agreement or sign any document, that contains a provision that would be unlawful if it were included in a credit agreement.".	Agreed	
Amendment of section 129 of Act 34 of 2005 **20.** Section 129 of the principal Act is hereby amended— *(a)* by the substitution in subsection (1) for paragraph *(a)* of the following	Agree – this corrects an anomaly.	

BILL PROPOSAL	NDMA COMMENTS	RECOMMENDATION
paragraph: "*(a)* may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to— (i) a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; **[and]** or (ii) in the event of any other dispute relating to the terms of the credit agreement, refer such credit agreement to the National Credit Regulator or court with the intent that the parties resolve any such dispute;"; *(b)* by the substitution for subsection (3) of the following subsection: "(3) Subject to subsection (4), a credit provider may at any time before the termination of a credit agreement or court judgment following default by a consumer of such credit agreement, condone such default and revive such credit agreement by not effecting termination of such agreement if the consumer, to the satisfaction of the credit provider, makes a reasonable arrangement or undertaking to rectify such default or upon payment of any agreed amount."; and *(c)* by the substitution in subsection (4) for the words preceding paragraph *(a)* of		

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the following words: "A **[consumer]** credit provider may not **[re-instate]** revive a credit a agreement after—".		
Amendment of section 130 of Act 34 of 2005 **21.** Section 130 of the principal Act is hereby amended by the substitution in subsection (1) for paragraph *(a)* of the following paragraph: "*(a)* at least 10 business days have elapsed since the credit provider delivered a notice to the consumer as contemplated in section 86 **[(9)]**(10), or section 129(1), as the case may be;".	Agreed, a numerical error is corrected.	
Amendment of section 134 of Act 34 of 2005 **22.** Section 134 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "As an alternative to filing a complaint with the National Credit Regulator in terms of section 136, a person may refer a matter or a dispute following an allegation of a reckless credit agreement that could be the subject of such a complaint as follows:".	Agreed	
Insertion of sections 134A and 134B in Act 34 of 2005 **23.** The following sections are hereby inserted in the principal Act after section 134: "**Registration and accreditation of alternative dispute resolution Agents** **134A.** The National Credit Regulator must register and accredit alternative dispute resolution agents. **Deregistration of alternative**	The ADRA's role should not be limited to disputes as such, and an extension of the role creates more opportunity for consumers to be assisted in a less formal capacity, which especially will benefit the lower income consumers. The NCT should roll out the provincial (consumer) offices as intended in the NCA, which will create more capacity for the NCT to hear matters brought to courts by ADRA's.	

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dispute resolution agents **134B.** (1) Subject to subsection (2), registration and accreditation in terms of section 134A may be cancelled by the Tribunal on application by the National Credit Regulator, if an alternative dispute resolution agent— *(a)* fails to comply with any condition of its registration and accreditation; or *(b)* contravenes this Act. (2) If an alternative dispute resolution agent fails to comply with any condition of its registration or accreditation or contravenes this Act, and such alternative dispute resolution agent is also licensed by another regulatory authority, the National Credit Regulator may— *(a)* impose conditions on the registration of such alternative dispute resolution agent consistent with its licence, if any; *(b)* refer the matter to the regulatory authority that licensed such alternative dispute resolution agent, with a request that the regulatory authority review that licence in the circumstances; or *(c)* at the request, or with the consent, of the regulatory authority that licensed that alternative dispute resolution agent, apply to the Tribunal for cancellation of the registration and accreditation. (3)A regulatory authority to whom a matter has been referred to in terms of subsection (2)*(b)*— *(a)* must conduct a formal review of the alternative dispute resolution agent's licence; *(b)* to the extent permitted by	ADR registration requirements and de-registration conditions need to be specified if compliance is required and a penalty of de-registration used. Registration requirements and review thereof to be done via a consultative constitutional process defined. The NCR should only have the right to refer cases with proposed de-registration to the NCT. The ADRA should be able to attend to disputes and debt mediation as mentioned in S.129. The ADRA must be enabled to assist consumers with matters INCLUDING banks, and S.134 reserves these disputes to only the Ombud with jurisdiction. Possible reckless matters will not successfully be identified through this limitation where bank cases are limited to an Ombud. Better expertise exists to assist consumers than just the Ombud. Voluntary debt mediation by ADRA's to negotiate concessions should be possible without the requirement of court confirmation. This will reduce timelines and costs to the consumers considerably and make the mediation process more attractable for consumers, as well as present relief to over-burdened courts.	

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the legislation in terms of which the alternative dispute resolution agent is licensed, may suspend that licence pending the outcome of that review; or *(c)* may request, or consent to, the National Credit Regulator lodging an application with the Tribunal for cancellation of the registration. (4) The National Credit Regulator must attempt to reach an agreement as contemplated in section 17(4) with any regulatory authority that issued a licence to an alternative dispute resolution agent that is registered in terms of section 134A, to co-ordinate the procedures to be followed in taking any action in terms of subsections (2) and (3). (5) The registration of an alternative dispute resolution agent is cancelled as of— *(a)* the date on which the Tribunal issues an order; or *(b)* in the case of a voluntary cancellation, the date specified by the said alternative dispute resolution agent in the notice of voluntary cancellation. (6) An alternative dispute resolution agent whose registration has been cancelled must not engage in any formerly registered activities after the date on which the cancellation takes effect.''.		
Amendment of section 136 of Act 34 of 2005 **24.** Section 136 of the principal Act is hereby amended by the substitution for	Agreed	

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subsection (1) of the following subsection: "(1) Any person may submit a complaint concerning an alleged contravention of this Act or a complaint concerning an allegation of a reckless credit agreement to the National Credit Regulator in the prescribed manner and form.".		
Amendment of section 140 of Act 34 of 2005 **25.** Section 140 of the principal Act is hereby amended by the substitution in subsection (1) for the words preceding paragraph *(a)* of the following words: "After completing an investigation into a complaint, the National Credit Regulator may take any enforcement action provided for in this Act, including but not limited to—	With reference to "..any enforcement action.." - The NCR's rights to enforce should be defined as accurately as possible to give effect to the administrative functioning of this organ of state. Any enforcement action means again that the NCR obtains the mandate of a high court, which is definitely administratively seriously flawed.	
Amendment of section 163 of Act 34 of 2005 **26.** Section 163 of the principal Act is hereby amended— *(a)* by the substitution for subsection (1) of the following subsection: "(1) A credit provider, debt counsellor or payment distributing agent must ensure that its employees or agents **[are trained]** attend prescribed training in respect of the matters to which this Act applies."; *(b)* by the insertion after subsection (1) of the following subsection: "(1A) A debt counsellor may only make use of agents for administrative tasks relating to debt review."; and *(c)* by the substitution in subsection (3) for paragraph	Agree with the first amendment in (1) Disagree with amendment (1A) – the law of agency defines responsibility of parties where agents are appointed, and it is common in all businesses that tasks are delegated, but the responsibility remains with the delegator. The debt review process is already a very tedious and cumbersome process, and limitation to delegate may make the process more expensive. If "administrative" is defined in a common understanding sense of general business activities, the amendments impact will be limited.	

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(b) of the following paragraph: "*(b)* that person must disclose to the consumer in writing the amount of any fee or commission that will be paid if the agreement is concluded; and".		
Amendment of law **27.** The laws specified in the Schedule hereto are hereby amended to the extent specified in that Schedule. **Short title and commencement** **28.** This Act is called the National Credit Amendment Act, 2013, and shall come into operation on a date fixed by the President by proclamation in the *Gazette*.	Agree with Schedule	