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Dr Rob Davies
The Minister
Department of Trade & Industry

Per e-mail: Klaas Mokaba: KMokaba@thedti.gov.za; nca@thedti.gov.za

Comments on the National Credit Amendment Bill 2013

The National Clothing Retail Federation (NCRF) comprising membership of The Woolworths Group, The Edcon Group, The Foschini Group, The Mr Price Group, Truworths International and Queenspark, would like to take this opportunity to comment on the proposed amendments to the National Credit Act 2005.

Our comments are set out below:

<i>Proposed change</i>	<i>Comment</i>
<i>Insertion of s71A</i>	<p>We disagree with the addition of this section for the following reasons:</p> <ul style="list-style-type: none"> • The information that is held by the various credit bureaus is very valuable to Credit Providers, and is an effective tool to be used by them when assessing risk and granting credit; • This information prevents the granting of reckless credit, by assisting Credit Providers to identify consumers who seem to show a trend in their spending behaviour of being bad payers and/or serial defaulters; • Such behaviour indicates that the consumer should either not be granted credit, or should be granted a limited amount of credit; • Should it be required of the bureaus to remove these

	<p>adverse listings, the question is then raised – what is the point of the bureaus? These organisations are essential to help Credit Providers assess their risk with regards to prospective consumers, as well as granting further extensions of credit from time to time. Why would the Credit Providers then even get records from credit bureaus in the future if the information that can be obtained is limited, and does not reflect an accurate representation of the prospective consumer’s payment behaviour?</p> <ul style="list-style-type: none"> • This will lead to tightening of credit by Credit Providers, as they will have less information at their disposal when assessing potential risk; • It could also lead to an increase in the price of credit, and also ultimately, to all products sold by the Credit Provider; • Furthermore, the requirement to provide such information to the credit bureaus within 7 days is contrary to the current practice, which is to provide the information once a month. It is currently impractical in the market place.
<p><i>Amendment of s82</i></p>	<ul style="list-style-type: none"> • Propose include a provision that requires an open and transparent public participation process to be followed and not only the minister consulting with the NCR, allowing sufficient time for stakeholders to submit their views and experiences beforehand. • Publication of any draft guidelines should be published for comment with sufficient time for all stakeholders to consult with their various bodies and advisors and prepare and submit comments. •

<p><i>Amendment of s83</i></p>	<ul style="list-style-type: none"> • The NCR is proposing an extension of its power. Where previously, discretion was given to the courts to suspend credit agreements, this is being extended to the National Credit Tribunal (NCT) as well; • The discretion given here to the NCR and the NCT is too broad. This change will not afford sufficient protection to Credit Providers; • The NCR should be obliged to refer matters for consultation. If the NCT is invested with the same powers as the court to determine whether credit is reckless, will we as Credit Providers still have a right to refer to the courts if we don't agree with the outcome? • We further have a concern that this new section may make it easier for consumers to allege that credit was granted recklessly in an environment where reckless granting is frequently frivolously alleged without consideration of the facts by consumers and Debt Counsellors alike, to the detriment of the reputation of Credit Providers. What criteria will be used by the NCT in investigating allegations of reckless credit? How would abuse by Debt Collectors and Alternative Debt Review agents be curbed, when they feel the easy way out it to refer to credit as reckless? • The NCT, or the member thereof, who would be hearing such a matter, would need to have similar qualifications to that of an officer of the court, to enable him/her to make a proper consideration of the legal and technical issues that would be raised in such matters. Will the Tribunal member/s have these requisite skills / qualifications? Will they have skills in arbitration, as would be required in such matters? • Further, the question of location is relevant – where will such matters be heard? Will the NCT be represented at a
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	<p>regional level as is the case with the courts? If not, a simple matter could turn into a very expensive exercise to a Credit Provider who has to fly representatives to appear before the Tribunal to answer what could well amount to a frivolous allegation. This could become extremely costly and counter-productive.</p>
<p><i>Amendment of s86(10)</i></p>	<ul style="list-style-type: none"> • The concern that we have with this proposed amendment is that there is no sanction on the consumer should they elect not to pay before the matter is heard in court. Delays in court rolls could render the situation untenable and open to abuse. Typically a matter may be set down for hearing 3 months hence and on that court date the Magistrate may be unavailable or for a host of other reasons, the matter is adjourned to the next court date months ahead. If consumers did not make payments during this period the Credit Providers will be severely prejudiced as they will not be able to enforce their rights in terms of their agreements. Furthermore, by compounding the arrears the consumers prejudice themselves as the arrears grow to such an extent that the matters do not solve or are incapable of being restructured. • Solution: <ul style="list-style-type: none"> ○ That section 86(10)(c) be amended to include the proviso that consumers have this protection subject to them making payments of their proposed installment. ○ That Section 86(7) also needs to be amended to reflect that in all circumstances a proposal must first be sent to the Credit Providers for approval before being set down at court. ○ In these circumstances the consumer will at least be obliged to pay their proposed Installment pending the matter being

	<p>finalised at Court.</p> <ul style="list-style-type: none"> • 86(10)(b) of the proposed new subsection provides that a credit provider may not terminate a review if the review is filed in court, which “filing” doesn’t required notice to be given to the relevant credit providers concerned with the matter. It is proposed that this is included in order for credit providers to be informed in order for them to be able to exercise their termination rights in terms of section 86(10)(a).
<p><i>Amendment to s129</i></p>	<p>There is some confusion here as to the definition of “dispute”. In the proposed s129 (1) (a) (i), mention is made of “<i>any dispute</i>” and then the proposed new s129 (1) (a) (ii) makes mention of “<i>any other dispute</i>”. As “dispute” is not defined, it is not clear what the distinction is between these two points, and when a Credit Provider would choose either of the options given. This needs to be clarified.</p>
<p><i>Insertion of sections 134A and 134B</i></p>	<p>We welcome the NCR’s attempt at regulating these agents, and the sections that have been added to deal with registration and accreditation (s134A), however, although the amendment speaks of “accreditation”, there is no indication of what form this will take.</p> <ul style="list-style-type: none"> • There still needs to be clarity on exactly: <ul style="list-style-type: none"> ○ what their role is; ○ what their rights and powers are; ○ what they must do to become accredited; ○ how they will be accredited; ○ how they will operate; ○ what training they will need to receive; ○ what subscribed fees, if any, will the consumer have to pay for their services; ○ what the Credit Provider’s obligations are towards them

	<p>when they attempt to negotiate with the Credit Provider.</p> <ul style="list-style-type: none"> • We are concerned about the risk of consumer exploitation by parties calling themselves ADR's this is currently prevalent in the industry. • There must be a public reference for these ADR's – this will assist the consumer with knowing whether they are dealing with an accredited party, and further will assist the Credit Provider with knowing whether they must deal with the ADR or not. • Will this process be treated differently to Debt Review – if so, how?
<p><i>Amendment to s136</i></p>	<p>The concern with this amendment, is the following:</p> <ul style="list-style-type: none"> • Frivolous allegations can be made by Debtor's who are in financial straits and looking for a way out of their commitments, as is currently happening in practice. In such a case, every investigation into these type of allegations takes considerable time and resources on the part of the Credit Provider, to find all original documents, phone calls, bureau records etc, as well as the time spent having to deal with each of these allegations. • There should be some forum where such matters can be dealt with before they go to the NCR, e.g. industry bodies such as the NDMA.

<p><i>Amendment to s140</i></p>	<ul style="list-style-type: none"> • The wording of this amendment casts wide powers on the NCR to take any enforcement action contemplated under any section of the Act, regardless of whether the section provides for such action to be taken by a court, Tribunal, Ombud, ADR agent or the NCR, which surely was not the intention. • It is recommended that this section is amended to provide that the NCR may only take enforcement action that the Act empowers it to.
<p><i>Amendment to s163</i></p>	<p>We welcome this amendment, however have some comments in this regard:</p> <ul style="list-style-type: none"> • What is “prescribed training?” • Will this be prescribed by the NCR? If so, what would be the cost attached to this? Will it be at specific venues, or would a manual be given to Credit Providers to use as a guide in this regard? We submit that this would be the best option for all parties. • We submit that the training should be accredited for SETA purposes?

Please feel free to contact the NCRF should any additional input be required.

Yours sincerely



Michael Lawrence
EXECUTIVE DIRECTOR
michaell@ncrfsa.org

1556135 021

sk.w.hofer@truworths