

BDCF PROPOSALS AND COMMENTS AND PROPOSAL ON THE NCA AMENDMENT BILL

• Voluntary Debt Mediation

The National Credit Act explicitly refers to Voluntary Debt Mediation in section 86(7)(b). It is apparent that debt mediation is inherent in the debt review process. It is a function and responsibility of a Debt Counselor in terms of the process (es) envisaged in section 86. Debt Mediation is therefore not a mechanism that can be divorced from the debt review process. The legal status of Voluntary Debt Mediation as contemplated in the NCA is to be found in both sections 86(8)(b) and 138 respectively. It is clear that voluntary debt mediation cannot be referred to outside of debt review if the former is to be and remain a legal process that rests with the debt counselor. Debt Counselors may be encouraged to use the voluntary debt mediation mechanism more often than is the case at present, obviously with Credit providers fully cooperating.

• Clearance Certificates

- Mortgage Bonds may be excluded in determining whether a clearance Certificate can be issued to a Consumer who has paid up his/her debts, considering that they are all long term credit agreements that may be settled, if restructured, after up to thirty years. The settlement of short to medium term credit agreements may be the yardstick used to determine clearing a consumer out of debt review. However, a proviso may be added, to the effect that the mortgage bond under debt review must not be in arrears or in default at the time that such consideration is made. This approach will ensure that consumers who restructure mortgage bonds are not excluded from the credit market for up to thirty years.

• Section 88(3)a

Considering the amendment of section 86 of Act 34 of 2005, especially subsections (10) and (11), it is imperative for section 88(3)(a) of the principal Act to be amended by:

the substitution of paragraph (a) of the following paragraph:

a “the consumer is in default under the credit agreement that is subject to debt review;”