NCRF Response
Proposed Debt Intervention Bill

January 2018

Retail Credit

Background

Credit offered by retailers is often the first line of credit that a consumer will be granted.

The **primary aim** of clothing retailers is to offer affordable credit to enable merchandise sales. Typically the profit margin will be in the sale of the merchandise, as opposed to the credit agreement. This clearly differentiates retail credit from credit provided by other credit providers.

If a consumer doesn't pay the retail credit account, there is a negative '**Dual Impact**' for retailers, as they lose money on the credit that was granted as well as the loss of profit on the merchandise.

It's in the retailers' best interests to ensure that the **debt is affordable**, and typically consumers are initially granted low credit limits in order to establish a good payment record.

However, if consumers do become over-indebted the retailers will offer **personalised and customised** repayment options to assist in rehabilitation.

Some of the retailers also offer **affordable optional insurance products** which cover events such as death and retrenchment to ensure consumers are able to meet their credit obligations in such an event. For clothing retailers **these products are optional** and not a condition of the credit granted.

Responsible credit enables financial inclusion "*which has a critical role in reducing extreme poverty, boosting shared prosperity, and supporting inclusive and sustainable development*" (World Bank Report 2014)

Profit for retailers is typically in the merchandise sales and not the credit product

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Objections

Intended Purpose Debt Intervention

Existing Debt Remedies
The Bill refers to certain debt remedies being inaccessible for certain consumers; those in the Insolvency Act, Magistrate's Court Act, and debt review in terms of the NCA, but no specifics are given as to why these remedies are inaccessible or ineffective.

Research should be undertaken to assess how these existing Acts could be changed, improved, or better implemented to assist consumers, which might prevent the need for further new legislation to be introduced.

No definition is given for "over indebted individuals" and no explanation given as to the meaning of "becoming productive members of society". Why are these consumers not productive members of society?

Unintended Consequences
Have the unintended consequence of the Bill been considered to ensure that a culture is not created that actively encourages consumers not to remain employed so that they can take advantage of a Debt Relief intervention?

Could the implementation of such a Bill create a culture of non payment so that consumers can access a debt relief intervention?

Impact Assessment
No impact assessment has been done on the effects of the Bill on the economy, tax, employment, society, businesses or to assess whether there are alternative non-legislative means to achieve the desired outcome.

An assessment has not been done on whether the Debt Intervention approach will achieve the predetermined purposes or whether it is even best suited to RSA.

Constitutional Concerns

Section 25 of the Constitution

"*No one may be deprived of property except in terms of a law of general application, and no law may permit arbitrary deprivation of property*"

- A credit provider's debtors book is their "*property*"
- By allowing certain debts to be extinguished, the credit provider is being deprived of its property
- No compelling reason or proper purpose has been established for this deprivation, which can be seen as arbitrary, and unconstitutional
- The Bill does not provide for procedural fairness, as credit providers are not given any opportunity to state their case where there is a deprivation of property
- Further, as certain categories of debt are not included in the Bill, this is not a law of general application
- The potential impact on credit providers must be considered if the Bill is to pass the test of being proportional to its outcome / purpose

Based on opinions from senior counsel, the Bill is not constitutional

Specific Concerns

Income R7500
No indication has been given or provided that analysis or research was undertaken to determine the maximum income figure of R7 500. There is no clarity on how this income will be verified in order to prevent abuse of the process. It is, and always will be in South Africa, will be particularly difficult to verify income for the informal sector and those who receive cash payments in lieu of services rendered.

Suspected Reckless Credit Agreements
It is not feasible to expect credit providers to report suspected reckless credit agreements to the NCR as they would not have access to the retrospective information that was used in the assessment, nor would they know the assessment mechanism that was applied and the reporting of reckless lending is not the role of a credit provider.

Procedures to be followed by consumers / credit providers
There are many opportunities for delays, and no maximum period is specified for the duration of the debt intervention application in order to prevent prejudice to a credit provider.

A credit provider must be allowed to participate in the initial stages of the process. The *audi alteram partem* principle applies i.e. both sides must be heard. Procedural fairness is paramount.

Credit Agreements
Suspension of credit agreements, a formal legal agreement, should remain within the ambit of the jurisdiction of the courts.

Criminalisation
The criminalisation of credit providers for failing to report suspected reckless credit agreements is extreme and a deviation from law makers to no longer criminalise what would typically amount to an administrative type action.

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Impact Study
Retail Sector

Impact of the Proposed Bill

All figures taken from NCR Q3 2017 report

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According to the NCR reports issued at the end of quarter 3 2017, the gross debtors book for the Retail sector is R36,3bn. This has increased 1.18% year on year.

No income statistics are available at an industry level *specifically* for the retailers, but the NCR report does show the total number of credit agreements granted in quarter 3 2017 for all credit facilities (which includes credit cards, garage cards, bank overdrafts, services, storecards and other facilities) for those who earn R7500 or less per month. When this figure is compared to other industry sectors, those in the credit facilities sector are impacted significantly more than the other sectors.

Given that the retailers typically grant the first line of credit, and are responsible credit lenders, the Bill would likely have a disproportionate impact on the Retail sector with significant impact to Retail business models.

No Credit Agreements Granted Q3 2017	Income <=R7500	3+ Delinquent
Mortgages	0.5%	4.2%
Secured	25.7%	15.3%
Credit facilities	**47.6%**	16.0%
Unsecured	26.5%	19.3%
Short-term credit	42.7%	14.7%
Developmental credit	24.1%	4.1%

Bill detrimentally impacts retailer business models with far reaching consequences

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Proposed Alternatives

Alternatives

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Group 1 : Income R3 500 +

- It is recommended that the low income cut-off of R7 500 per month be reduced to R3 500 per month in line with the proposed National Minimum Wage. This should be a household income.

- For consumers who earn more than R3 500 per month, they should be referred to a debt counsellor and follow the current debt counselling process which has proven to be effective.

- Research completed by NCRF shows that as a result of NCR initiatives the effectiveness of the debt counselling process increased significantly from 2015 onwards with more than 80% of debt counselling applications accepted and 90% of consumers under debt review starting to pay within 2 months.

Duration from Acceptance to Payment

Months	2009	2010	2011	2012	2013	2014	2015	2016	2017
0-2	0,0%	0,2%	0,1%	0,9%	1,5%	3,9%	72,1%	85,0%	90,5%
3-5	0,4%	0,2%	0,2%	0,4%	0,7%	13,0%	24,9%	13,3%	7,1%
6-11	0,4%	0,2%	0,8%	0,8%	3,2%	51,4%	2,0%	1,1%	0,6%
12+	99,3%	99,4%	98,8%	97,9%	94,5%	31,7%	1,0%	0,7%	1,7%

- Feedback received from consulted debt counsellors shows that it is commercially viable for the debt counsellors to facilitate debt counselling for consumers who earn R3 500 per month or more.

- Reducing the low income threshold to R3 500 per month would also significantly reduce the logistical requirements and associated costs the NCR would face.

Debt counselling should be a viable route for income R3500+

Alternatives

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Group 2 : Income <= R3 500

- Research completed by NCRF shows that very few consumers (7%) who apply for debt counselling are earning less than R3 500. This suggests that the debt counselling process is not working as effectively for this group of low income consumers.

- It is recommended that a NCR led task team including industry representatives be established to identify mechanisms to address key issues that prevent low income consumers from either applying for or completing the debt review process including:

    - The debt review process for very low income customers not being commercially viable for debt counsellors.

    - The costs incurred in the debt review process by low income consumers due to the higher average debt to income ratio of low income consumers.

    - The high rate of section 86 exits once the repayment plan has been accepted by the creditors.

Task team set up to look at improvements to debt counselling process for low income

Alternatives

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Group 3 : No Income

- Retrenchment can have a significant impact on a consumer's ability to service their debt but research completed by NCRF indicates that the impact is not immediate.

- NCRF research shows that 48% of retail consumers who were retrenched in the last 3 years had successfully maintained their retail account 12 months after they were retrenched indicating that they have secured other employment or have access to other funding.

- A task team should be set up to look at the insurance products that are currently available within the market which cover retrenchment, and to advise if these products should be more proactively encouraged to consumers.

A large proportion of retrenched consumers maintain their retail accounts

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Summary

Summary

- **Proposed debt intervention Bill is not constitutional under section 25, as it is not a law of general application and it is an arbitrary deprivation of property.**

- **The impact of the proposed Bill has severe detrimental impacts on the business models for the clothing retail sector which could have far reaching consequences.**

- **The Bill refers to certain debt remedies being inaccessible, such as the Insolvency Act, Magistrates Court Act and debt review in the NCA, but no detail is given as to why these remedies are inaccessible.**

- **Debt counselling should be available for anyone who has an income, and therefore it should not be necessary for debt intervention to be required for consumers with an income. A task team should be set up to look at further improvements that could be made to the debt counselling process.**

- **A review of retrenchment insurance products currently available within the market place should be undertaken to determine if these should be more widely encouraged to consumers.**

- **An independent study should be conducted to understand the effectiveness and success of similar debt interventions implemented elsewhere in the world.**

- **An impact assessment should be completed for the South African market before a Bill is proposed taking into account the impact on the economy, tax, employment, society and businesses.**

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Thank You

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Research

NINA Debt Relief Concept

Not Currently Provided For In The NCA

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No Income and No Asset (NINA debtors)

According to the **research paper** circulated by the NCR, the concept of Debt Relief for NINA debtors has been implemented in England, Wales and New Zealand.

At a high level, the criteria for eligibility is for those debtors where:

- Liabilities < certain threshold
- Income < threshold
- Value of assets < certain threshold

In South Africa, retailers have an active role in the lending of credit to both the formal and informal markets, which is a very different market to where NINA is currently applied. In South Africa the size of the informal market, would make it difficult for consumers and credit providers to prove who would be eligible for NINA.

This program could also have **unintended consequences** such as the following :

- Consumers are essentially incentivised not to find employment to avoid honouring their credit agreements. This could lead to a culture of non payment being acceptable and not being regarded as an issue.

- If the cost of a NINA programme is expected to be carried by the retailers, this would significantly increase the cost of doing business, which in turn could increase the cost of credit to consumers or possibly prevent retailers offering credit to certain segments of the economy.

NINA Debt Relief concept is not appropriate for South African market