ANNEXURE A

15 January 2018

Written submission on the draft National Credit Amendment Bill of 24 November 2017 ("Bill"):

Debt intervention

Provision in Bill	Content in Bill (*Clause* refers to a proposed change/new clause in the Bill; *section* refers to an existing provision in the NCA)	Comment
General comments		1. Please refer to annexure B, which is a copy of our letter sent to the chairperson of the portfolio committee regarding fundamental **constitutional concerns**. These concerns remain and must be read as being incorporated in this submission. 2. Neither the **NCR nor the NCT has the capacity** to take on the additional responsibilities set-out in the Bill. Additional funds will also be needed for both the NCR and the NCT to ensure that there are sufficient numbers of skilled staff members and to avoid backlogs in debt intervention matters. A proper analysis will need to be undertaken to determine what the expected volumes will be for both entities and whether these can be properly and expeditiously managed. This funding cannot come from credit providers as they already pay an annual fee amongst other costs. 3. In addition to a proper analysis that is required (and as elaborated on in this submission), **no impact assessment or regulatory impact assessment** has been undertaken on the effects of the Bill on the economy, employment and society. Requiring credit providers to write-off debts, fees, interest and/or charges can only have a negative on the economy. 4. The **NCR and the NCT are in addition being given extensive powers**, such as the NCT's powers to suspend payments or extinguish debt. Without adequate balancing of the rights of consumers with those of credit providers, and not allowing credit providers to present their cases to the NCR/NCT, such unilateral excessive powers will be unchecked and damaging to the consumer credit market.

		5. **Significant and complex system changes** will need to be developed and implemented by credit providers, the South African Credit and Risk Reporting Association (SACRRA), credit bureaux and data providers to accommodate the debt intervention flag(s) to be held at the credit bureaux. 6. Regarding the **financial literacy or budgeting skills programme**, there are many unanswered questions, such as who will run these, where they will be situated, who will design the programmes, who will monitor attendance, how will attendance be recorded and how will they be funded. 7. The state will have to **subsidise the debt** that credit providers write-off and/or provide meaningful tax incentives, including VAT and income tax allowances on debt that have to be written off, and steps for its recovery may not be pursued, because it has been extinguished through debt intervention. The main basis for this is that none of the listed circumstances for debt intervention are as a result of any wrongdoing by credit providers, and they should not be unlawfully deprived of their property (the debts). 8. A state subsidy of debt review fees charged by debt counsellors would better serve the over-indebted than being used for debt intervention, by instead of channelling money for the state resources required for this this new initiative, rather subsidising the debt review process. Debt review could be improved upon and this should be tackled before introducing debt intervention, if at all. 9. Overall, the notion of debt intervention may have public appeal and attract positive media coverage but if implemented, debt intervention will have a **negative effect on South Africa's already ailing economy**. Its usefulness can in any event be debated as consumers are reluctant to undergo an affordability assessment when applying for a credit facility and this is even more likely to be the case when a consumer applies for debt intervention. 10. Regarding the **criminalisation** of credit providers for failing to report suspected reckless credit agreements to the NCR, this proposed addition is very concerning, disproportionate and a step backwards, and is a deviation from the approach of law-makers to no longer criminalise and penalise what would normally amount to administrative-type actions. Furthermore, extending criminal liability to every director and prescribed officer of a company which committed an offence where such persons were *knowingly* party to the contravention is again, an extreme measure, with the

		meaning of the word "knowingly" to feature in many High Court cases.
Preamble of Bill and not the NCA itself	Whereas the purpose of the NCA is to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers	The application of the contents of the Bill will affect the sustainability of the credit market. It is extremely difficult for creditors at this stage to even accurately estimate their exposure due to debt intervention. The costs of system enhancements will be excessive and it would be unfair of the NCT to require a credit provider to maintain a credit agreement at zero interest and no fees. The purpose of the NCA is to balance the rights of the consumer and credit provider. The Bill removes many rights of the credit provider.
Preamble of Bill and not the NCA itself	Whereas the categories of consumers for whom existing debt interventions contained in legislation such as the Insolvency Act, Magistrates' Courts Act and the NCA, are inaccessible, either because of the focus these Acts place on benefit to credit providers, or the cost involved with such debt intervention	The Bill refers to existing legislation that provides relief to consumers who are in financial difficulties, such as the NCA itself, Magistrates' Court Act and Insolvency Act, but does not provide detail as to why current legislation is not sufficient or cannot be used subject to procedural improvements. If the costs to consumers under existing legislation are the problem, then it would be best to review and subsidise these costs as a priority as this could negate the need for the Bill. In addition, an impact assessment and/or regulatory impact assessment has not been undertaken by the portfolio committee to determine if debt intervention will indeed be beneficial to consumers, credit providers and the economy.
Preamble of Bill and not the NCA itself	Whereas without suitable alternative debt intervention being made available to over-indebted individuals in these categories, it is an unbeatable challenge for them to manage or improve their financial position and become productive members of society.	Regarding the reference to consumers facing an unbeatable challenge to manage or improve their financial position, this challenge is not as a result of registered credit providers. It is also unreasonable to expect these credit providers to be held responsible for unexpected changes in consumers' circumstances. This furthermore suggests that a study has been undertaken which concludes that consumers who are over-indebted are not productive members of society. No evidence or information has been provided that this statement is factually correct. There is no definition provided for "productive members of society" or of "over-indebted". These are new concepts being introduced without being defined or an explanation being given, and will be open to various interpretations.

3 (g),(h),(i)	The purpose of the Act is extended to include: (g) addressing and preventing over-indebtedness…where the consumer's financial situation so allows or may so allow in the foreseeable future**;** (h) providing for a consistent and accessible system of ~~consensual~~ resolution of disputes arising from credit agreements; [our amendment] (i) providing for a consistent and harmonized system of debt restructuring, debt intervention… where the consumer's financial situation so allows, or may so allow in the foreseeable future	What is the "foreseeable future"? How will credit providers know what a consumer's future financial situation will be? The word "*consensual*" should not be deleted as it was included in the NCA for a good and valid reason; consensus is an important factor when resolving matters between parties to an agreement. The NCA contains several dispute resolution mechanisms where agreement between the parties is essential in ensuring binding obligations are created.
5	Section 5 of the principal Act is hereby amended by the insertion in subsection (1)after paragraph *(d)* of the following paragraph: ~~*(dA)* Chapter 4, Part E~~ [our amendment]	Debt intervention should not apply to incidental credit agreements. The NCA has limited application to incidental credit agreements and together with developmental credit agreements (as in the case of the affordability regulations) should be excluded from the ambit of debt intervention. Given the nature of an incidental credit agreement, debt intervention constitutes an unnecessary burden on the credit provider when consideration is given to the lack of any concomitant substantial benefit to the receiver of incidental credit.
15	The enforcement functions of the NCR are extended to include: …	The NCR should not be given the right to suspend credit agreements. It is not a judicial body which can adjudicate on matters. This is the role of the courts and possibly, a well-functioning NCT.

	(hA) evaluating and referring applications for debt intervention contemplated in sections 88A and 88F; (hB) assessing and suspending credit agreements considered to be reckless as contemplated in section 82A	A suspension of a credit agreement will limit the rights of a credit provider and this cannot be limited without first following a fair and transparent process which includes giving both parties the opportunity to state their case. It is also impossible for the NCR to assess whether a consumer has previously been granted credit recklessly without being given evidence (by a credit provider) of the consumer's income and expenses as at the time when that credit was granted. A retrospective evaluation of consumer's finances requires information which the NCR is not in possession of, unless it engages with the credit provider first to establish what information the consumer provided the credit provider at the time of applying for credit. This proposed clause must either be deleted or wording should be included therein to state that the NCR may refer a suspected reckless credit agreement to the NCT (which is well functioning) to make a ruling. In addition, the NCR will need to have sufficient skilled staff members to conduct the envisaged assessment and evaluation processes if the provision is to be retained.
43	The requirement to register as a credit bureau is extended to include persons who are in the business of receiving reports of, or investigating:… (v) ~~successful~~ debt intervention applications [our amendment]	Credit providers need to be able to access reliable information on when debt intervention is "granted" and is debt written off, to ensure that they do not grant credit/further credit to a consumer. See further comments under clause 71A below. The word "successful" should also be deleted. Not only successful applications should be recorded, but all debt intervention applications.

69	The requirement for the NCR to keep a national register of credit agreements is extended to include: (1A) The NCR must keep a register of applications for debt intervention contemplated in section 88A or as may be prescribed in terms of section 88F received by the NCR and any order made in terms of such applications (7) The Minister, by regulation in accordance with section 171, may prescribe the information to be recorded in the register contemplated in subsection (1A)	This register must be kept up-to-date at all times and must be available with reliable access for the public to inspect. A process should be allowed for any interested party to dispute information in the register. This is concerning as any change to the actual consumer profile string at the bureau involves significant development for the bureaus, SACRRA (data hub) and data providers. This could significantly impact the time taken to become compliant from a systems perspective. It does not appear that there is a clear understanding of what information will be held at the credit bureaux.
70	(1)(a) a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, ~~a~~ a debt intervention ~~granted~~ applications and debt interventions granted in terms of this Act, and related matters; [our amendment] (2)(aA) A registered credit bureau must accept without charge the filing of consumer credit information from the NCR related to ~~a successful~~ debt intervention	The credit bureaux should maintain any information relating to debt intervention and not just where a debt intervention order is granted, because a credit provider's rights to enforce an affected credit agreement are suspended from date of notification of an application for debt intervention. The credit bureaux should also accept the filing of consumer credit information from a credit provider, related to a debt intervention application. In addition, any activity in terms of a debt intervention application must be reported, not only those that are successful. The

	~~application~~ in terms of this Act. [our amendments]	credit provider's rights to enforce a credit agreement are suspended from date of notification of application for debt intervention.
71A	(3A) Credit bureaux must remove a listing related to any ~~a successful~~ debt intervention application in terms of this Act [our amendments] – ~~(b)~~ ; (a) ~~12 months~~ 5 years after the date on which the order contemplated in section 88C(4) was handed down; (b) 7 days after the period stated in section 88C(5)(b) expires; or	Clause 88C (2)(c)(i) as referred to in clause 71A(3A), provides for the determination of the maximum interest, fees or other charges to be suspended, for a period not exceeding 12 months . The NCA makes no provision for the above to be regarded as a successful "debt intervention application" neither does it impose any obligation on the NCR to update the credit bureaux with any information relating to a determination to suspend interest, fees and charges where no order is granted. Subsequently, sub-clause 3A(a) becomes irrelevant. However, it may be a useful addition to the Bill to make it obligatory for credit bureaux to be notified of such determinations. If suitable amendments are made to the Bill then this sub-clause can be retained. Clauses 88C(3)(a) and (b) as referred to in clause 71A(3A)(b), apply where a debt intervention extinguishment order is not (yet) granted but a determination is made by the NCT that qualifying credit agreements must be suspended, in part or in full for 12 months. The order appears to be only granted for the extension of the suspension period for a further 12 months (after submission by the debt intervention applicant of financial circumstances). Again no obligation is imposed on the NCR to update the credit bureaux at this point or with this information which means that sub-clause (3A)(b) is of no purpose. With reference to clause 88C(4), the NCR must update the credit bureaux with the fact that credit agreements are extinguished, in part or in full. Only upon the expiry of 5 years (and not 12 months), must the credit bureaux remove the debt intervention listing. The insertion of a longer period is justified in light of the drastic effect that an order of extinguishment by the NCT under clause 88C(4) will have on a credit provider, and because such extinguishment will only be ordered if the debt intervention applicant's household is in a dire financial position and has been for some time, thus warranting the retention of this important information at the credit bureaux for an extended period so that the risk of possible future over-indebtedness or the granting of reckless credit is minimised. It is thus important that any potential

	(c) 7 days after the NCR or the NCT concluded that the application for debt intervention has been rejected or was unsuccessful as contemplated in section 88C(2)(a) or (b), whichever is the later date.[our amendments]	credit provider be fully informed that such an order was granted and that the consumer's financial position should be more thoroughly scrutinised to ensure that he/she does not once again find himself/herself in the same position. The 5 year period is consistent with the 5 year period applicable to the information on civil judgments, as well as sequestration, administration and rehabilitation orders, retained by credit bureaux. With reference to clause 88C(5)(b), the NCR must notify the credit bureaux that the limitation on the debt intervention applicant on applying for credit has expired, whereafter the credit bureaux have 7 days to remove the listing of the limitation. A new sub-clause is suggested which is self-explanatory. **General comments** If debt intervention is a once-off – then such information must be retained by credit bureaux for a significant period of time to ensure that credit providers are aware of the risk involved in granting further credit/credit to those consumers. Extensive system changes will be required to ensure that no fees and interest are charged on affected accounts by credit providers and to halt the ageing of the account. The extent and scope of system changes will require an **implementation or transitional period** to allow credit providers to be compliant with the new requirements. There needs to be clarity on what information is to be deleted from the credit bureaux. A consumer's entire credit profile cannot be deleted from a credit bureau, as though it never appeared in the first place. Building-up a credit history and profile is what assists credit providers in assessing a consumer's credit history and ensuring credit is not granted recklessly.
82A(1)	If a credit provider during an assessment contemplated in section 81(2) reasonably suspects any credit agreement included in that assessment of being a reckless	It will be impossible to assess whether a consumer has previously been granted credit recklessly without receipt of evidence of the consumer's income and expenses as at the time when that credit was originally granted.

	credit agreement, that credit provider must report that suspected reckless credit agreement to the NCR	The word "reasonable" is also very vague and will be open to interpretation, often resulting in unnecessary litigation. A retrospective evaluation of a consumer's finances by another credit provider requires information (and an evaluation thereof) which credit providers are not privy to (such as a consumer's previous income and expenses, and the credit bureau's report as generated at the time of an application for credit). It is very unreasonable to expect credit providers (in addition to validating consumers' existing financial position), to also validate consumers' historic income and expenses as this is not received during the credit application process, only evidence of the latest financial position. Credit bureaux do not hold information on consumers' income. They also do not keep any information on consumers' "non-credit account" expenses. This proposed clause must be deleted. The reporting of suspicious reckless lending is not the responsibility of a credit provider and is an attempt to shift responsibility from the NCR to credit providers. If the NCR is not able to fulfil this task, then one questions how it will be able to undertake the additional responsibilities set-out in the Bill. The NCR's staffing position (as reported by the Mail & Guardian in its 21 December 2017 to 4 January 2018 edition) is such that there is a 18.4% vacancy rate, with key positions unfulfilled. This does not bode well for the NCR by adding further responsibilities where it is already under-resourced and inadequately resourced at present.
82A(2)	If a debt counsellor during an assessment contemplated in section 86(6) reasonably suspects any credit agreement included in that assessment of being a reckless credit agreement, that debt counsellor must report that	Please refer to our comments above on clause 82A(1) which apply equally to the role of debt counsellors. What is envisaged could result in a situation where a credit provider spends much of its time having to justify its affordability assessment processes. Further, credit providers have no knowledge of the assessment mechanisms used by other credit providers to determine

	suspected reckless credit agreement to— (a) the NCR where the debt counsellor rejects the application as contemplated in section 86(7)(a) or makes a recommendation contemplated in section 86(7)(b); or (b) the Magistrate's Court where the debt counsellor makes a recommendation contemplated in section 86(7)(b)	credit granting/affordability. On the face of it, a credit agreement may look reckless to one party, but is actually completely justifiable. It will result in an unnecessary and unreasonable administrative burden for all credit providers. In addition, the credit provider must always have the right to defend its credit granting process and to explain it if needs be. Furthermore, what is considered as a reasonable suspicion? It is also not clear how a debt counsellor can possess any suspicion of prior reckless lending if a debt counsellor does not have access to a consumer's historic income and expenses. The clause is also contradictory because the reason for the obligation to report to the NCR is to alert it to a possible reckless credit agreement but the cross-references to sections 86(7)(a) and (b) refer to situations where a debt counsellor concludes that the consumer is not over-indebted even if there was a reckless credit agreement (sections 86(7)(a)). This proposed clause should be deleted in totality.
82A(3)	The NCT may impose an administrative fine as contemplated in section 151, in respect of a credit provider or a debt counsellor who fails to report a suspected reckless credit agreement	This clause is absolutely unreasonable. It is not the role of credit providers to police each other. Please see the above comments under proposed clauses 82 A(1) and (2). Further, the amount of the fine is not stated.
82A(4)	The NCR must investigate the report contemplated in subsections (1) and (2)(a) in accordance with section 139	If the NCR "must" investigate, this will increase its workload to an unmanageable level.

82A(5)	If the NCR is reasonably of the view that a credit agreement reported to it as contemplated in subsections (1) and (2) is a reckless credit agreement, the NCR must — (a) issue a notice to the affected credit provider in the prescribed form, suspending the reckless credit agreement; and (b) refer the reckless credit agreement to the NCT for a declaration contemplated in section 83	This provision is most unreasonable. The credit provider has a right to defend itself and the matter should be investigated with the credit provider first. What process will the NCR apply when investigating the suspected reckless credit? Section 81(4) states that it is a <u>complete defence</u> to an allegation of reckless credit if the <u>consumer failed to fully and truthfully answer</u> any requests for information made by the credit provider as part of the affordability assessment. It is thus of utmost importance that the NCR first approaches the relevant credit provider and obtains the consumer's credit application (with supporting documents) as completed by the consumer at the time that the credit was applied for. The NCR must thus be completely certain that a suspected credit agreement was reckless before it may suspend the suspected reckless credit agreement. Should the NCR incorrectly suspend a credit agreement and it is later found that such credit is in fact not reckless, <u>the consumer</u> will suffer the consequences as the suspension will extend the consumer's debt repayment term and amount. Section 82 A(5)(a) should be deleted. Only a court of law should determine whether a credit agreement should be suspended, otherwise one has the untenable situation that adverse findings can be made by the NCR without those affected having the opportunity to be heard which offends against the *audi alteram partem* rule.
82A(6)	Section 84 applies in respect of the suspension of a reckless credit	As submitted above, should the NCR incorrectly suspend a credit agreement and it is later found that such credit is in fact not reckless,

	agreement by the NCR: provided that where the NCT finds that the credit agreement is not a reckless credit agreement, section 84(2)(b) does not apply to that credit agreement	the consumer will suffer the consequences as the suspension will extend the consumer's debt repayment obligations and term. This new sub-clause should be deleted. Further, extensive systems development will be required to ensure that an account where the credit agreement has been suspended, is not aged, and the increasing delinquency is reflected at the credit bureau.
85	Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged or it appears to the court that the consumer under a credit agreement is over-indebted, the court may — … (c) where the consumer may qualify for debt intervention contemplated in Chapter 4, Part E, refer the matter directly to the NCR to evaluate the consumer's circumstances and make a recommendation to the NCT in terms of section 88B(4)	The comments made in various places above apply here regarding the capacity of the NCR and difficulties in undertaking an *ex post facto* evaluation of a consumer's financial history.
86(6)(b)	A debt counsellor who has accepted an application in terms of this section must determine, in the prescribed manner and within the prescribed time – … (b) ~~if the consumer seeks a declaration of reckless credit~~, whether any of the consumer's credit agreements appear to be reckless [our amendments]	Please see above comments under proposed clauses 82A(1) and (2). The word "determined" appears to have been omitted.

88A(1)(a)	(a) 'debt intervention applicant' means a SA citizen or permanent resident that is a natural person and who on the date of submission of the application contemplated in subsection (2) is a consumer under a credit agreement and —	No indication has been given or provided at the trade and industry portfolio committee ("PC") meetings that an analysis or research was undertaken to determine the figure of R7,500. Neither has an impact assessment study been done. Even though National Treasury is undertaking an impact assessment study, this will only be published in January 2018. It is hoped that the report will be made public on publication and assuming that it is based on solid research, its conclusions should be used by the PC to improve upon the contents of the Bill. This information should also give the public a further opportunity to comment on the Bill in relation to the findings in the report.
	(i) receives no income, or if he or she receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did on an average for the six months preceding the date of the application for debt intervention not exceed R7,500 per month;	There needs to be clarity on how an applicant's income will be verified in order to prevent abuse of the process. This will be challenging when it comes to those working in the informal sector and who receive cash payments in respect of services rendered. It is suggested that it would be best to amend the definition of a "debt intervention applicant" by making an assessment of the income of the household of the applicant and that the household's income should be no more than R3,500 per month. The latter figure correlates with the national minimum wage currently under consideration. For those consumers that earn an income above the threshold in the Bill, debt counselling rules and debt counselling fees should be reviewed to ensure that these rules can accommodate all consumers regardless of income levels thereby making this an affordable and accessible option for these consumers.
	(ii) has no realisable assets; and	At sub-clause 88A(1)(A)(ii), realisable assets, in light of the comments above on the assessment of income to be based on household income, must be that of the household and not just the applicant.
	(iii) is not subject to debt review contemplated in section 86, and includes a disabled person, a minor heading a household, or a woman heading a household	The reference in sub-clause (iii) to a disabled person, a minor heading a household, or a woman heading a household, is highly problematic. The person in question would have to be a consumer in terms of the NCA. If the disabled person is not a South African citizen or permanent resident, or a woman heading a household is not a consumer, then the portion of the sub-clause as it refers to them is unnecessary – if they are not consumers in terms of the NCA the sub-clause does not apply. The reference to a minor heading a household is even more problematic. It is most improbable that the minor would be a

		consumer so the Act would in any event not apply to the minor. The clause should be deleted.
88A(1)(b)	'realisable asset' means an asset that can swiftly be converted into cash at a value that reasonably reflects the second-hand market value of that asset, but does not include — (i) necessary tools and implements of trade, stock and agricultural implements up to a maximum of R10,000; (ii) professional books, documents or instruments necessarily used by that debt intervention applicant in his or her profession up to a maximum of R10,000; (iii) necessary household furniture and household utensils up to a maximum of R10,000; (iv) necessary beds, bedding and wearing apparel of the debt intervention applicant and of members of his or her immediate household; (v) the supply of food and drink in the residence of the debt intervention applicant sufficient for the needs of that debt intervention applicant and of his or her immediate household, for a period of one month; and	It is significant (in light of comments above) that in sub-clauses 88A(1)(b)(iii), (iv) and (v), reference is made to the <u>household</u> rather than the individual/applicant, which supports our argument that the household's income and assets, rather than only the income or assets of the applicant, should be considered in section 88A(1). In light of this and our suggestions above, it is recommended that a definition be for households, as follows: "household" means one or more adult persons who are part of the consumer's immediate family or household and who share their financial means and mutually bear their financial obligations". This definition is aligned with that in section 78(3)(b) and applies for purposes of the affordability assessment process referred to in section 81(2) and regulation 23A. How will the NCR verify the value of a debt intervention applicant's realisable assets? Furthermore "realisable assets" will need to be defined further. Any item of value not specifically excluded in the clause, constitutes a realisable asset (such as a TV set, computer equipment for personal use and enjoyment, a motor vehicle), which could disqualify a consumer from benefitting from debt intervention. The comments above under clause 88A(1)(a) apply regarding the seemingly arbitrary value of R10,000.

	(vi) a fund such as a pension fund or retirement annuity that has a future realisation date	On what basis is a pension and retirement annuity excluded as a realisable asset? A retirement annuity is a monetary asset. It should be removed, or, if it remains listed in this clause, a maximum value should be placed on it as it will provide an opportunity for consumers to abuse this loophole.
88A(1)(c)	"total unsecured debt" means the total of money or other consideration contemplated in section 101(1) due by the debt intervention applicant under all the unsecured credit agreements to which the debt intervention applicant is a party	The **inclusion of only unsecured credit in the Bill is questioned** – there are other forms of credit which should be included, such as credit granted by the furniture retail industry. The comments above under clause 88A(1)(a) and (b) apply regarding the seemingly arbitrary decision to only focus on unsecured credit. It is unreasonable to expect credit providers whose debtors' book constitutes solely, or principally, of unsecured credit, to apply debt intervention in terms of this Bill. This will detrimentally affect unsecured credit providers' business models and possibly lead to job losses.
88A(2)	A debt intervention applicant may apply once to the NCR in the prescribed manner and form for a debt intervention, if that debt intervention applicant has at 24 November 2017, a total unsecured debt owing to credit providers of no more than R50,000	Does "once" mean once in their lifetime and does it mean that "once" applies to any basis for debt intervention, be it under a Ministerial regulation due to a sudden event or as applied for by an individual under the general debt intervention provisions in the Bill? What statistics or research support the stated total unsecured debt figure of R50,000? In addition, given the comments above, the figure should be that of the household and not just the applicant. We also suggest that other qualifiers are added, such as that the applicant and his/her household must receive no income or if an income is received (as defined at clause 88A(1)(a)) it must not exceed R3,500 per month and the total unsecured debt must be no more than R20,000. This clause places an onus on the NCR to maintain an up to date register of debt intervention applicants. What remedies are available to credit providers if a consumer undergoes debt intervention twice due to a procedural/record-keeping failure by the NCR? It is suggested

		that there be a defence in the Bill available to credit providers who are negatively affected by this potential failure to keep accurate and up to date records by the NCR.
88A(3)	The following credit agreements that form part of the total unsecured debt, do not qualify for debt intervention prescribed for in this Part E (including debt intervention prescribed under section 88F) [our amendment]: (a) a developmental credit agreement contemplated in section 10; and (b) subject to section 85(c), any credit agreement where, at the time of the application for the debt intervention, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement	Is it correct to assume that consumers who have entered into or who are under/subject to administration, sequestration, or debt review, are excluded from debt intervention? We suggest that the clause be amended as shown. This makes the provision clear that the listed exceptions apply to both the once-off debt intervention provided for in proposed sections 88A to E, and the Ministerial proclaimed debt intervention measures provided for in proposed section 88F. It is also suggested that a further subclause be added as (d) which excludes credit facilities in terms of which the credit provider provides goods/services to the consumer and the outstanding balance under the agreement is less than a certain amount, such as R2,000, but this figure requires further in depth analysis. It is used here for illustrative purposes and as an indication.
88A(4)	The application contemplated in subsection (2) must be supported by— (a) proof of the debt intervention applicant's daily, weekly or monthly income and expenses, supported by the most recent proof thereof in the possession of the debt intervention applicant;	What will constitute "proof" of a debt applicant's income and what amounts to "most recent proof"? It is suggested that this clause is drafted with more details or specifics. There are consumers who earn an income which is not banked i.e. they have cash income which, often being sporadic, is not deposited in a bank and they do not receive salary slips. How will these consumers' incomes be verified? A consumer's income must be verified. If not, this could provide a loophole for consumers to falsely state their income.

	(b) information confirming the total unsecured debt; (c) credit agreements that relates to the total unsecured debt; (d) credit insurance agreements, if any, pertaining to the debt intervention applicant's indebtedness; (e) agreements, if any, entered into with creditors related to restructuring any of the debt intervention applicant's debt; (f) a set out of all the assets owned by the debt intervention applicant; and (g) such other information as may be prescribed	Sub clause 2(d): What is a credit insurance agreement? Is a credit insurance policy not what is meant here? Sub clause 2(f): How will the NCR verify a debt intervention applicant's assets? Please refer to further comments under section 88A(1)(b). In light of comments made above on extending the ambit of information to the household and not just that of the applicant, at subclauses (a), (b) and (f), the household's information must apply and not just that of the applicant.
88B(1)	On receipt of an application in terms of section 88A, the NCR must — (a) provide the debt intervention applicant with proof of receipt of the application; (b) notify, in the prescribed manner and form—	What is the purpose of notifying credit providers of a debt intervention application but not allowing credit providers to respond to the application? This is procedurally unfair and infringes on credit providers' rights to a fair hearing, especially when the order sought by the debt applicant will amount to deprivation of a credit provider's property. Some credit providers may have information at hand which can be of assistance to the NCR/NCT when considering a debt intervention application, such as credit bureau information regarding the consumer's total existing debt obligations, and information about

	(i) all credit providers that are listed in the application; and (ii) every registered credit bureau; and (c) provide each credit provider listed in the application with a summary of the debt intervention applicant's income, assets and liabilities	consumer's realisable assets (for example consumer's immovable property as registered at the deeds office). Timelines need to be specified in terms of which the NCR must comply with subclauses (1)(a), (b) and (c). It is also suggested that a new subclause (d) be added as follows: "(d) confirm that the debt intervention applicant is not under debt review, and if he/she has been under debt review in the previous 6 months, ascertain the reasons for the cancellation of the debt review"
88B(2)	A debt intervention applicant who applies for the debt intervention, and each credit provider affected by such application, must— (a) comply with any reasonable requests by the NCR to facilitate the evaluation of whether the debt intervention applicant qualifies for the debt intervention; and (b) participate in good faith in the application for the debt intervention	How can a credit provider be expected to comply with a debt intervention order despite not being given an opportunity to provide a response to the application before it is decided on? Should a credit provider have information at hand which would affect the outcome of a debt intervention application, surely this information should be brought to the attention of the NR/NCT beforehand? Yet credit providers are not given an opportunity to do so. In addition, the duties of the credit provider need to be stipulated and use of vague wording, such as "reasonable requests" and "participate in good faith" need to be elaborated on.
88B(3)	When evaluating the application, the NCR must determine whether any of the credit agreements making up the debt under consideration — (a) may constitute reckless lending contemplated in section 80, or	What process will the NCR apply when investigating the "suspected" reckless credit? In addition, once it has determined that any credit agreement is excluded from debt intervention by virtue of subclauses (3)(a) to (c), it must notify the affected credit provider(s) and the credit bureaux. Clause 88B(3)(a): it is of utmost importance that the NCR first approaches the "suspected" credit provider and ask for the consumer's credit application as completed by the consumer at the

	may constitute an unlawful transaction or a transaction resulting from prohibited conduct or dereliction of required conduct, and if so section 55 applies and the NCR must separate that credit agreement from the application for the debt intervention and make a recommendation to the NCT for an appropriate declaration; [our amendment]	time that the credit was applied for. This is even more important given that the NCR makes a unilateral determination (based on current wording) on reckless lending/unlawful transactions. Section 81(4) states that it is a <u>complete defence</u> to an allegation of reckless credit if the <u>consumer failed to fully and truthfully answer</u> any requests for information made by the credit provider as part of the affordability assessment. The NCR must therefore have no doubt that a suspected credit agreement is reckless before it may suspend the suspected reckless credit agreement. Should the NCR incorrectly suspend a credit agreement and it is later found that such credit was not reckless, <u>the consumer</u> will suffer the consequences as the suspension will extend the consumer's debt repayment term and amount.
	(b) is secured or an agreement contemplated in section 88A(3), and if so, the NCR must separate that credit agreement from the application for debt intervention, [our amendment]; or	Clause 88B(3)(b): the question must again be posed: **<u>why only is only unsecured credit included in the Bill</u>**? On what basis was it decided that unsecured credit is the only form of credit which is detrimental to consumers and should be subject to debt intervention? It is unreasonable towards credit providers whose book consists solely or principally of unsecured credit, to be expected to have debts on their books extinguished. This will extremely detrimentally affect unsecured credit providers' business models and possibly lead to a loss of jobs. What if the insurance covers the whole credit agreement? Is the whole agreement then excluded?
	(c) is the subject of credit insurance, and if so, assist the debt intervention applicant to claim against that credit insurance and in	Regarding the suggested amendments in the column to the left, there is no reason as to why the NCT must be informed under subclauses (3)(b) and (c) hence the amendments suggested

	doing so, the NCR must separate that credit agreement so that any part of the credit agreement that qualifies for the credit insurance does not form part of the debt intervention order [our amendment]	
88B(4)	If the NCR, taking into account the criteria set out in section 88A(2) and (3) and after having evaluated the information contemplated in section 88A(4) against that criteria, reasonably concludes that— (a) the debt intervention applicant does not qualify for the debt intervention, the NCR must reject the application ~~;~~ and notify - (i) all credit providers that are listed in the application; and (ii) every registered credit bureau [our amendments]; (b) the debt intervention applicant does not qualify for the debt intervention, but is nevertheless experiencing, or is likely to experience, difficulty satisfying all the debt intervention applicant's obligations under credit agreements in a timely manner, the NCR must refer the debt intervention applicant to a debt counsellor for debt review or assistance with a voluntarily plan of debt re-arrangement and notify, - (i) all credit providers that are listed in the application; and (ii) every registered credit bureau [our amendments];	At subclause 4(1)(a) wording has been suggested creating an obligation on the NCR to notify credit providers listed in the application and all registered credit bureaux. This is a reasonable and necessary addition. The same addition has been made at subclause 4(1)(b).

	(c) a credit agreement that formed part of the application may constitute reckless lending, an unlawful credit agreement or a credit agreement resulting from prohibited behaviour, or resulting from dereliction of required conduct, the NCR must make a recommendation to the NCT for an appropriate declaration [our amendments]; or (d) qualifies for the debt intervention, the NCR must make a recommendation to the NCT for the debt intervention to be granted to the debt intervention applicant and the NCR must - (i) notify the intervention applicant of such referral; (ii) notify, (a) all credit providers that are listed in the application; and (b) every registered credit bureau [our amendments]	Regarding subclause (4)(c) - what process will the NCR apply when investigating the suspected reckless credit? It is very important that the NCR first approaches the suspected credit provider and ask for the consumer's credit application form as completed by the consumer at the time that the credit was applied for. Section 81(4) states that it is a <u>complete defence</u> to an allegation of reckless credit if the <u>consumer failed to fully and truthfully answer</u> any requests for information made by the credit provider as part of the affordability assessment. The NCR must therefore have no doubt that a suspected credit agreement is reckless before it may suspend the suspected reckless credit agreement. Should the NCR incorrectly suspend a credit agreement and should it be later found that such credit is in fact not reckless, <u>the consumer</u> will suffer the consequences as the suspension will extend the consumer's debt repayment term and amount. Once the NCR has determined that a credit agreement may constitute reckless lending, an unlawful credit agreement or a credit agreement resulting from prohibited behaviour, or resulting from a dereliction of required conduct, it *must* be referred to the NCT for a declaration. The alternative is to delete this subclause. As the custodian of the debt intervention process, an obligation must be imposed on the NCR to keep all affected credit providers and the credit bureaux updated of every step in the application and referral process. Clear timelines for must be stipulated in terms of which the NCR has to assess the application, to make a recommendation to the NCT and the time period within which the NCT must approve/reject the order after having received it from the NCR.

88C(1)	An application for the debt intervention may be considered by a single member of the NCT, with reference to the documents included in the referral from the NCR only, without further evidence being led	The *audi alteram partem* rule should apply – both parties have the right to be heard. This is a basic principle of natural justice. The comment regarding no further evidence being led is problematic as it assumes that the NCR has performed its duties thoroughly and correctly in obtaining all relevant information and evidence prior to referring the matter to the NCT. What appeals process is available if this is not the case? The potential consequences are so serious that it is essential that the right of the credit providers to be heard, and if necessary lead evidence, should not be removed.
88C(2)	The NCT may, within 2 months of referral of the matter to it by the NCR [our amendment], in addition to its other powers in terms of this Act, after having considered the referral contemplated in section 88B(4)(c) or (d) and any other relevant information — (a) make an order that the debt intervention applicant does not qualify for the debt intervention and reject the application; (b) request the NCR to refer the debt intervention applicant to a debt counsellor for debt review or assistance with a voluntarily plan of debt re-arrangement; (c) where the NCT is of the view that a debt intervention applicant could satisfy payment requirements, but an order contemplated in paragraph (b)	It is suggested that the time period be added as shown in the column to the left. The effect of this is that the role of the debt counsellor may become obsolete as these sections could be seen as replacing the debt counselling process and the recently established debt counselling rules system. This could have a significant negative impact on the debt counselling process which is a suitable alternative. Furthermore, what amounts to "financial circumstances"? This needs to be defined in order to ensure clarity. In addition, at subclause (c)(i), 12 months is too long and it is suggested that it be reduced to 6 months. This subclause interferes with the contractual rights of a credit provider. Credit providers will be forced to maintain credit agreements and they will have to absorb the costs in this regard. The courts have on more than one occasion stated that there needs to be a careful balancing of rights of credit providers with those of consumers. We do not believe that this is reflected in the Bill. How will the NCR/NCT monitor compliance with the order both on the part of the credit provider and the debt intervention applicant? The order made by the NCT will have to contain a schedule clearly showing the outstanding balance per credit agreement, (as at the

	would not be effective, determine the— (i) maximum interest, fees or other charges under a qualifying credit agreement for such a period as the NCT deems fair and reasonable but not exceeding ~~twelve~~ 6 months, before the expiry of which the debt intervention applicant must present his or her financial circumstances to the NCT for an extension of the determination for a period not exceeding ~~twelve~~ 6 months or another order contemplated in this subsection: Provided that the maximum interest, fee or other charge may be zero [our amendments]; and (ii) maximum monthly instalment that the debt intervention applicant can be expected to pay to the affected credit providers during the period contemplated in subparagraph (i) and grant an order to that effect [our amendments]; (d) declare — (i) a credit agreement reckless as contemplated in section 55 read with 83; or (ii) a credit agreement or a provision of a credit agreement void for being unlawful, resulting from prohibited conduct or the dereliction of required conduct as contemplated in section 55;	date the order is granted), the number of instalments the debt intervention applicant is required to pay over a period of months, and the instalment amount payable per credit agreement per month. The order will also have to make provision for where and on which date the payment needs to be made by the debt intervention applicant. What happens if the debt intervention applicant does not abide by the order? Surely the credit provider's right to charge interest, fees and charges cannot remain suspended for the duration of the order, if the debt intervention applicant does not make payment in terms of the order? The NCR should not be given this power. The matter should be referred to the NCT where the credit provider should also be given the opportunity to lead evidence.

	(e) grant an order in accordance subsections (3), (4) or (5) related to the debt intervention; or (f) grant a combination of orders	
88C(3)(a)	If the NCT is of the view that the debt intervention applicant qualifies for debt intervention, the NCT must grant an order suspending [our amendment] all of the qualifying credit agreements, in part or in full, for 12 months, before the expiry of which the debt intervention applicant must present his or her financial circumstances to the NCT for – (i) an order extending the suspension for a further period of 12 months; or (ii) an order in terms of subsection (4)	What would happen in the case where the debt intervention applicant does not present his/her documents again after 12 months? The Bill is not clear on this. Would the suspension then be automatically lifted after a period of time? These aspects need to be provided for in the Bill. Furthermore, what amounts to "financial circumstances"? This needs to be defined in order to ensure clarity. There needs to be clarity as to the effect of the NCT's order(s) on credit insurance.
88C(3)(b)	Before the expiry of the further period of 12 months contemplated in paragraph (a)(i), the debt intervention applicant must present his or her financial circumstances to the NCT for an order in terms of subsection (4) or such other order as the NCT may deem appropriate taking the financial circumstances of the debt intervention applicant into account [our amendment]	What would happen in the case where the debt intervention applicant does not present his/her documents again after 12 months? The Bill is not clear on this. Would the suspension then be automatically lifted after a period of time? These aspects need to be provided for in the Bill. Furthermore, what amounts to "financial circumstances"? This needs to be defined in order to ensure clarity. The words in the left-hand column need to be added.

88C(3)(c)	The NCT may, in respect of a credit agreement that is partly or wholly the subject of credit insurance and where, at the time of granting the debt intervention order contemplated in paragraph (a), the claim of the debt intervention applicant against that credit insurance has not yet been finalised, postpone its order in respect of that credit agreement for such a period as the NCT deem reasonable to allow for the finalisation of the claim against the credit insurance	As stated above, it is not clear what is meant by credit insurance. Is this a reference to a product such as an income protector product? In any event, subclause 88B(3)(c) provides: " *… that any part of the credit agreement that qualifies for the credit insurance does not form part of the debt intervention order*." The question is thus - how is this clause possible or even relevant?
88C(4)	If the NCT is of the view that the financial circumstances of the debt intervention applicant did not sufficiently improve, during the period or extended period contemplated in subsection (3), to justify an order releasing the debt intervention applicant from the debt intervention process, or an order contemplated in subsection (2)(b), (c) or (f), the NCT must declare the debt under the qualifying credit agreements as extinguished: provided that the extinguishment— *(a)* may be a percentage of the debt due; and (b) must apply equally to all the qualifying credit agreements	Once the debt intervention applicant has been referred to a debt counsellor then the provisions of section 86 relating debt review should apply. The NCT cannot declare credit agreements included in debt review as extinguished. In addition, the orders which the NCT may grant under (c) amount to deprivation of the credit providers' property (i.e. monies owed to them by consumers, for products and services provided to the consumer). The unconstitutional nature of this is covered in our letter attached as annexure B to this document. Also, it is noted that in terms of the proposed clause 88A(2), that only monies owing to credit providers, based on unsecured credit, will be affected by this Bill. Therefore only certain types of ownership will be affected, resulting in the Bill not being a law of general application. Furthermore, it has been noted during a meeting of the portfolio committee that the "old" unsecured credit debts owing to African Bank will not be affected by this Bill as those debts are currently collected by the South African Reserve Bank. Once again, this proves that the Bill is not one of general application and is therefore arbitrary and unconstitutional. It is thus proposed that this clause is deleted.

88C(5)	(5) When granting an order contemplated in subsection (2)(c), (e) or (f), the NCT must set conditions related to [our amendment]—	The optional nature of the content of orders as set-out in sub-clauses (a) to (c) should be changed to an obligatory requirement to be in all such orders granted by the NCT. The following must also be considered as regards granting orders:
	(a) notification of credit providers and the execution of the order;	(a) The NCR must, within a specified timeline inform the all parties involved to ensure timeous execution of the order
	(b) subject to section 88D(5), a limitation on the debt intervention applicant's right to apply for credit contemplated in section 60 , for the duration of the period for which the order granted in terms of subsection (2)(c), (e) or (f) provides, and for any further [our amendment] period, as the NCT deems fair and reasonable but not exceeding the maximum periods referred to in subsection (7);	(b) The debt intervention applicant's rights to apply for credit must be limited at a minimum for the duration of the suspension imposed on credit providers
	(c) any credit agreement that qualified for the debt intervention;	
	(d) the attendance of a financial literacy or budgeting skills programme intended to assist the debt intervention applicant to manage his or her financial position; or	(d) How will the debt intervention applicants fund their participation in the proposed financial literacy or budgeting skills programme? What if they cannot afford it? How will attendance and successful completion be monitored? What if the debt intervention applicant does not comply? This is equally applicable to clause 88D(1)(c).
	(e) any matter that in the view of the NCT will aid the debt intervention applicant to manage or improve his or her financial position and become a productive member of society	
88C(7)	The limitation on the debt intervention applicant's right to apply for credit contemplated in	

	subsection (5)(b) must not be less than 12 months but[our amendment] may not exceed 36 months and when determining an appropriate period, the following factors must be considered: (a) the amount in respect of which the debt intervention is sought; (b) the number of credit agreements submitted for debt intervention; (c) the period of qualifying credit agreements; (d) the debt intervention applicant's credit record; and (e) the debt intervention applicant's credit behaviour in respect of the qualifying credit agreements	It is suggested that the added wording as indicated in the column to the left be added. Was research undertaken to show that the period of 36 months is realistic and reasonable? If debt intervention is a once-off, then such information must be kept for a significant period of time to ensure that credit providers are aware of the risk involved in granting further credit/credit to those consumers.
88C(8)	The NCR must notify the debt intervention applicant of any order contemplated in subsection (2), and serve a copy thereof in the prescribed manner and form, on — (a) all credit providers that are listed in the application; and (b) every registered credit bureau	It must be obligatory for the NCR to notify all credit providers and credit bureaux within 24 hours of the order being granted.

88C(9)	A credit provider affected by an order contemplated in subsection (2) may by notice to the debt intervention applicant and the NCR, set down the matter for reconsideration of the order	Once again, the *audi alteram partem* rule applies and credit providers should be allowed to submit information which may affect the outcome of a debt intervention application before the order is granted. The NCT will be inundated with reconsideration applications from credit providers. What will happen to the debt intervention order terms? It should be suspended pending the outcome of the reconsideration application, as submitted by the credit provider.
88D(2)	(2) A credit provider who receives notice of an application contemplated in section 88B(1)(b) may not exercise or enforce by litigation or other judicial process any right or security under that credit agreement until— (a) the NCR or NCT rejects the application; (b) the debt intervention applicant does not accept a referral contemplated in section 88B(4)(b) or section 88C(2)(b); (c) the referral processes contemplated in section 88B(4)(b) or section 88C(2)(b) have been terminated or concluded in accordance with this Act; or (d) subject to subsection (3), the processes initiated by an order contemplated in section 88C(2)(c) or (e) have been terminated or concluded in accordance with this Act	A maximum period for finalisation of the debt intervention application must be stipulated to prevent a situation where both parties are prejudiced by lengthy delays. If delays occur, (as are currently being experienced with the judiciary and quasi-judiciary) it could take almost a year for an application to be considered. This is highly prejudicial to credit providers' rights to repayment of the debt owed to them.

88D(3)	If the NCT ordered that the debt that underlies a credit agreement is extinguished, or that the credit agreement was reckless or void, the credit provider may not, in respect of the part of the debt that the order applies to, exercise or enforce by litigation or other judicial process any right or security under that credit agreement	Please refer to our letter attached as annexure B which refers to the unconstitutionality of extinguished debt.
88D(4)	(4) Subject to subsection (5), a debt intervention applicant who **has applied for or** was granted a debt intervention may not incur any further changes under a credit facility or enter into any further credit agreement with a credit provider for the **duration of the application process and** for the period during which the NCT's order contemplated in section 88C(2)(c) or (e) applies [our amendment]	In terms of clause 88D(2) credit providers may not enforce credit agreements from this point; subsequently the debt intervention applicant must not be allowed to enter into further credit agreements pending the outcome of the application.
88D(6)	(a) A debt intervention applicant must notify the NCR and all relevant credit providers [our amendment] of any change in his or financial circumstances regardless of whether such change occurred — (i) during the period between the date on which the application for the debt intervention was	In clause 88D(6)(a) the words "and all relevant credit providers" should be inserted after "the NCR" as shown in the left-hand column. The reason for this is that the parties to a credit agreement are the credit provider and the consumer, and it is essential that the consumer who is a debt intervention applicant notifies the credit provider of changed circumstances to ensure transparency. The words "financial circumstances" must be clarified. There appears to be a typographical error in that the word "her" before "financial circumstances" has been omitted.

	submitted and the date on which a decision was communicated to the debt intervention applicant; or (ii) where an order contemplated in section 88C(2)(c), (e) or (f) was made, during the applicable period contemplated in that section (b) The debt intervention applicant must notify the NCR of a change in circumstances contemplated in paragraph (a), within 10 days of the event that caused the change in circumstances.[our amendment] (c) The NCR must within 30 days [our amendment] evaluate the change in financial circumstances contemplated in paragraph — (i) (a)(i) and adjust the application information accordingly; or (ii) (a)(ii) and if the change affects the effectiveness of the order or justifies changing the order, refer the matter to the NCT to change the order	The 60 day time period is excessive. Our suggestion is that it be changed to 10 days. The words "within 30 days" must be inserted in clause 88D(6)(c) after "The NCR must" to ensure that the process maintains momentum.
88D(7)	(7) The NCT ~~may~~ must [our amendment] rescind or change an order for debt intervention – (a) if information is placed before the NCT showing that the debt intervention applicant who applied for the debt intervention was	As a debt intervention order will have significant and drastic consequences for credit providers, and in the events provided for in this subsection, which include significant wrongdoing on the part of the debt intervention applicant, the NCT must be obliged to rescind the order hence the use of the word "must" as shown in the left-hand column. Credit providers must also have the right to approach the NCT where a consumer was dishonest (albeit with the onus of actually proving

	dishonest in his or her application; or (b) if the debt intervention applicant who was granted debt intervention fails to comply with the conditions of the order contemplated in section 88C(5), or fails to comply with the requirements of subsections (1), (4) or (6)	dishonesty which in itself could be problematic) and be placed in the same position had the order for debt intervention not been granted. The NCT will be inundated with applications for rescission of debt intervention by credit providers if credit providers are not allowed to respond to the debt intervention application before the NCT makes an order. Allowing credit providers to participate in the initial phases of a debt intervention application will alleviate this. Furthermore, the terms of the debt intervention order should be suspended pending the outcome of the rescission application. How will the NCR ensure compliance and monitor compliance on the part of the debt intervention applicant? If the credit provider can show non-compliance on the part of the debt intervention applicant, what process is to be followed to bring this to the attention of the NCT in order for it to consider amending the debt intervention order?
88E(1)	A debt intervention applicant who was granted an order contemplated in section 88C(2)(c), (e) or a combination including either order, may in the prescribed manner apply to the NCR for a rehabilitation order to be granted by the NCT [our amendment]	A rehabilitation order should not be submitted to the NCR. As it is the NCT that granted the order, the application for rehabilitation should be submitted to the NCT as the NCT is the only forum which can fairly consider such application. It seems that the intention was that the application be submitted to the NCR for consideration by the NCT.
88E(2)	An application for a rehabilitation order may be made at any time after an order contemplated in section 88C(2)(c), (e) or a combination including either order, was granted: provided that the debt intervention applicant must submit proof that he or she has fulfilled the obligations that were due on the date of the application for the debt intervention, under each credit agreement affected by that order, by -	Payment to the credit provider must include all costs incurred by it, such as debt collection costs and service fees. Proof of payment is also not proof of settlement in full. This must be confirmed by the credit provider. Proof of payment could easily be fraudulent.

	(a) payment in full to the credit provider of the value of such obligations plus interest on that amount at the prescribed rate from the date of the application; or (b) entering into an agreement with a relevant credit provider to the effect that the value of such obligations plus interest on that amount at the prescribed rate from the date of the application has been fulfilled to the satisfaction of the credit provider	What is meant by *"…an agreement with a relevant credit provider to the effect that the application has been fulfilled to the satisfaction of the credit provider*"? Is this intended to mean a settlement letter or a consolidation loan? If so, this wording should be changed as the current wording is unclear.
88E(3)	The application for a rehabilitation order must be supported by the following: (a) a letter from each credit provider affected by an order contemplated in section 88C(2)(c), (e) or a combination including either order, confirming— (i) receipt of the payment in full contemplated in subsection (2)(a), or that an agreement contemplated in subsection (2)(b) was entered into; and (ii) that the debt intervention applicant has notified the credit provider in writing of his or her intent to apply for a rehabilitation order in the prescribed manner; (b) proof of payment in full contemplated in subsection (2)(a), or that an agreement	Proof of payment is not proof of settlement in full. This must be confirmed by the credit provider. Proof of payment could easily be fraudulent. Therefore, clause 88E(3)(b) should be deleted.

	contemplated in subsection (2)(b) was entered into, where a credit provider fails or refuses to provide the debt intervention applicant with a letter contemplated in paragraph (a); (c) proof of the debt intervention applicant's income and expenses; (d) a *set out* of all the assets owned by the debt intervention applicant; and (e) such information as the Minister may prescribe	What is "set out" in (d) intended to convey? Is it a schedule with supporting documentation attached? The requirements in this regard should be more precisely formulated.
88E(4)	The NCR must consider the application for rehabilitation and if the debt intervention applicant has complied with the requirements contemplated in subsection (3), refer the matter for consideration by the NCT [our amendment]	As stated above at clause 88E(1), a rehabilitation order should not be submitted to the NCR at all. As it is the NCT that granted the order, the application for rehabilitation should be submitted to the NCT as the NCT is the only forum which can fairly consider such application. The word "application" must be amended to "applicant".
88E(5)	The NCR must notify each affected credit provider of the date on which the application for rehabilitation will be considered [our amendment]	It should be the NCT that notifies credit providers. Credit providers should be given an opportunity to respond to the application for rehabilitation. Once again, the *audi alteram partem* rule dictates that both parties must be heard. In addition, it is often the case that correspondence from the NCR arrives after action is taken; this is likely to be the case here too.
88F(1)	The Minister may prescribe a debt intervention measure to alleviate household debt in accordance with this section read with section 171	What research was undertaken to determine that the Minister must acquire such powers? The NINA debt relief that applied in New Zealand and India did not include this.

		Please make available the research conducted which motivates the granting of such relief. Of further concern is that the Minister himself may propose such wide-reaching relief without having to go through a parliamentary public participation process (albeit that consultation with *inter alia* the "credit industry", the national assembly and tabling a report before the national assembly is provided for in clause 88F(5)). Given the ambit of the powers and the resulting relief, the relief proposed should either be subject to parliamentary scrutiny and a parliamentary public participation process albeit under the auspices of the Minister or amount to an amendment of the NCA itself and thus subject to a parliamentary public participation process. Furthermore, it is suggested that a further subclause be added: "88F(1A) should be inserted, reading as follows:- 1A) The following credit agreements that give rise to debt which forms part of total unsecured debt, do not qualify for debt intervention provided for in this section 88F:- *a)* A developmental credit agreement contemplated in section 10; (b) subject to section 85(c), any credit agreement where, at the time of the application for the debt intervention, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that credit agreement; or (c) credit facilities in terms of which the credit provider provides goods to the consumer and the outstanding balance under the credit agreement is less than R2000;" The reasoning behind this is that the same exclusions from the once-off debt intervention process under clause 88A to clause 88E should apply to the Ministerial proclaimed debt intervention under clause 88F. Please see the cautioning above of the amount of R2,000.

88F(2)	A debt intervention measure contemplated in subsection (1) must address economic circumstances that — (a) constitute a significant exogenous shock that caused widespread job losses; (b) were caused by a regional natural disaster or similar emergent and that is of grave public interest, which was identified by the Minister by notice in the Gazette as such; or (c) affect any of the groups of persons referred to in subsection (3) in such a way that no efficient or effective method to alleviate household debt is available to them	A definition is required for the following phrases as these will be open to various/numerous interpretations and it is important for the public and industry to have certainty, and prevent potential abuse of such wide phrases. The phrases are: • "*significant exogenous shock"* • "*regional natural disaster"* • *"similar emergent and that is of grave public interest*" The state must subsidise such debt interventions as none of these circumstances are a result of any wrongdoing by credit providers. Has the state established a budget to reimburse credit providers for the loss of debts which they will not be allowed to collect? Once again, this amounts to arbitrary deprivation of property which is unconstitutional.
88F(3)	A debt intervention measure contemplated in subsection (1) may only benefit one or more of the following consumers: (a) indigent persons; (b) persons with an income of less than R7,500, which includes disabled persons, minors heading a household and women heading a household;	The word "indigent" must be defined or deleted. The word "includes" at (b) creates interpretative difficulties. Either it means that the provision applies to the listed persons and who need not have an income of less than R7,500 or it means that the income level for the listed persons is irrelevant. This must be clarified.

	(c) persons who suffered an unforeseen loss of income in a sector identified by the Minister by notice in the Gazette as being subject to mass retrenchments; or (d) persons who are subject to adverse conditions in a sector or region identified by the Minister by notice in the Gazette as such	Many consumers will claim they earn less than R7,500 in order to take advantage of a debt intervention programme. Given that there is no central database or system to prove what a consumer earns, how can this be responsibly and properly implemented? In regard to a reference to disabled persons, a minor heading a household, and a woman heading a household, see the comments above in respect of clause 88A(1)(a)(iii). To be consistent with earlier comments, the income must be that of the household and lower than the R7,500 stated. It is suggested that this be amended to R3,500. It is also recommended that subclauses (c) and (d) (as currently numbered) contain a requirement that in each case, that as a result of the relevant hardship, they fall within the ambit of subclause (b).
88F(4)	A debt intervention measure contemplated in subsection (1) and as applied for by a qualifying consumer, may consist of one or more of the following measures only: (a) determining the maximum interest, fee[s] or other charges applicable under a credit agreement for a specific period; (b) suspending the enforcement of a credit agreement for a period of not more than ~~12~~ 6 months: provided that the period may be extended for a further period of ~~12~~ 6 months; [our amendments]	The wording of the lead-in should be amended so that it is clear that debt intervention must still be a formal process requiring the person concerned to apply for debt intervention. Changes have been made in the left-hand column, with additional changes to the time periods in clause (b). The state will need to subsidise such debt interventions as none of these circumstances are a result of any wrongdoing by credit providers. Has the state established a budget to reimburse credit providers for the loss of debts which they will not be allowed to collect? Once again, this amounts to arbitrary deprivation of property which is unconstitutional.

	(c) declaring debts under a credit agreement as extinguished; (d) providing for a liquidation process for consumers with minimal assets and minimal income; or (e) providing for a combination of any of the measures contemplated in paragraphs (a) to (d)	Based on comments above on the unconstitutional nature of extinguishment of debt, it is suggested that subclause (c) be deleted.
88F(5)	Before prescribing a debt intervention measure contemplated in subsection (1), the Minister must— (a) consult— (i) the Minister responsible for finance; (ii) the Minister responsible for justice; (iii) the NCR and the NCT; and (iv) the credit industry; (b) table a report in the National Assembly referred to in section 42(1)(a) of the Constitution on the consultations conducted in paragraph (a);	Industry should be given <u>at least 60 business days to comment</u> on any draft regulations. And further, an industry-wide impact assessment needs to be undertaken before the regulations are drafted. Please refer to the comments above under clause 88F(5) regarding a parliamentary public participation process.

	(c) consult the National Assembly referred to in section 42(1)(a) of the Constitution, and where the debt intervention measure proposed falls outside of the criteria referred to in subsections (2) and (3), or if a different debt intervention measure from that contemplated in subsection (4) is proposed, obtain the permission of the National Assembly to proceed; (d) publish a notice in the Gazette stating that he or she intends to prescribe a debt intervention measure, indicating the— (i) type of debt intervention measure to be prescribed; (ii) group of consumers who will qualify for the measure; (iii) type or value of the debt that will qualify for the measure; (iv) process for application and approval of the measure; and (v) consequences of the measure, and must provide interested parties at least 30 days within which to comment thereon; and (e) after consideration of the comments contemplated in	

	paragraph (d), table in the National Assembly a report on the comments received and the debt intervention measure that the Minister intends to introduce for consideration and comment	
89(5)	If a credit agreement is unlawful in terms of this section, despite any other legislation or any provision of an agreement to the contrary, a court or the NCT, as the case may be, must make a just and equitable order including but not limited to an order that (a) the credit agreement is void from the date the agreement was entered into	The NCT must not be given the power to declare credit agreements void. This falls within the ambit of the courts and should remain as such. Over many decades, precedent has been created and the common law interpreted on declaring agreements void. Such precedent must be followed. NCT orders do not take precedent into account.
90(4)	In any matter before it respecting a credit agreement that contains a provision contemplated in subsection (2), the court or the NCT as the case may be, must (a) sever that unlawful provision…or alter it …or (b) declare the entire agreement unlawful as from the date the agreement …took effect	Please see the comments above in respect of section 89(5) which apply equally here.
106	(1) A credit provider may require a consumer to maintain during the term of their credit agreement— (a) where section (1A) is not applicable to the credit agreement, credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit	If credit life insurance is to be made mandatory for consumers who have unsecured debt that is no more than R50,000 in total and for a period longer than 6 months, this will increase the cost of credit and make credit less affordable to consumers. Note that regarding the R50,000 limit, it has been suggested earlier in the submission, that R20,000 is more appropriate.

	provider in terms of their agreement…. (8) The Minister must, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit life insurance contemplated in subsection (1A) that a credit provider may charge a consumer provided that such prescribed amount must cover the costs of such credit life insurance incurred by the credit provider; [our amendment]	The words: "provided that such prescribed amount must cover the costs of such credit life insurance incurred by the credit provider" should be inserted at the end of the subclause, after the word "consumer". It would not be fair to make credit insurance mandatory and to set a maximum limit which does not cover the credit provider's costs of providing such insurance. **General comment regarding credit insurance and the proposed amendments** If the NCT orders that no fees or charges may be billed to the affected credit agreement, then any credit insurance will lapse as the premium/fee would not be billed, and thus not paid (refer to clause 88C(2)(c).
130 (4) (e)(ii)	In any proceedings contemplated in this section, if the court determines that – (i) the credit agreement is either suspended or … (ii) was declared reckless or void by the NCT, or the NCT ordered that the debt underlying that credit agreement was extinguished the court must dismiss the matter	Please refer to comments above under section 89(5) on the role of the NCT in declaring credit agreements void.
137(1)(A)	(1A) The NCR must refers applications for debt intervention as contemplated in section 88A to the NCT in accordance with section	The words need to be added as indicated.

	88B(4)(d), or as may be prescribed in accordance with section 88F [our amendments]	
142 (3A)	The single member of the NCT may consider an application for debt intervention contemplated in section 88B(4)(d), or as may be prescribed in accordance with section 88F, with reference to the documents included in the referral from the NCR only, without further evidence being led	The *audi alteram partem* rule must apply – both parties should have the right to be heard.
157(A)	(1) Intentionally submitting false information in an application for the debt intervention, or presenting information in an application for the debt intervention in a manner that is intended to mislead the NCR or NCT, is an offence. (2) Any person who deliberately alters his or her financial circumstances or that of the household which they form a member, in order to qualify for the debt intervention, is guilty of an offence [our amendment]	To be consistent with the suggestions above, wording has been added in the left-hand column relating to a household.
157B(1)	(1) A credit provider who – (a) participates in an unlawful credit marketing practice contemplated in section 74(2) and (3), 75(1) or section 91; (b) does not comply with the limitations to entering into a credit agreement at a private dwelling contemplated in section 75(2);	It has been the general legislative trend to decriminalise legislation (for example: the Companies Act and the Consumer Protection Act). The proposal is now to do an about turn and criminalise certain contraventions of the NCA. Has research been undertaken to ascertain whether this will in fact deter credit providers that act unlawfully?

	(c) does not comply with the limitations related to visiting or entering into a credit agreement at a person's place of employment contemplated in section 75(3); (d) fails to comply with section 81(3) by entering into a reckless credit agreement with a prospective consumer; (e) enters into an unlawful agreement contemplated in section 89(2) with a prospective consumer; (f) includes an unlawful provision contemplated in section 90 in a credit agreement with a prospective consumer; or (g) offers or demands that a consumer purchases or maintains insurance that is unreasonable, at an unreasonable cost, or is to cover a risk that reasonably cannot arise in respect of that consumer, as contemplated in section 106(2)(a), (b) or (c) respectively, commits an offence	
157C(2)	Subsection (1)(a) and (b) does not apply to a credit provider if – (a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of	Subsection (a) should be amplified by including the requirement that such credit providers' applications for registration are not only received, but also <u>approved</u> within a certain period of the submission of the application. Otherwise this section will not have any effect on unregistered credit providers as they would be allowed to enter into credit agreements despite having an application for registration which is later rejected.

	section 40, and was awaiting a determination of that application; or (b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the NCR in terms of section 42(3)(b)	
157D(1)	Where the person who committed an offence in terms of this Act is a company, every director or prescribed officer of the company who ~~knowingly~~ intentionally was a party to the contravention, is, subject to the provisions of this Act and any other law, guilty of an offence and subject to the same penalties as if such director or prescribed officer committed the offence in person	What research has been conducted to show that such a penalty is appropriate? Determining which office bearers of a credit provider are guilty of an offence will amount to a witch-hunt and burden scarce and over-burdened SAPS officers. It is simply inappropriate, despite the yardstick of "knowledge" to have such a provision. It is in any event, suggested that "knowingly" must be changed to "intentionally", as this is better defined in our law.
161(1)(aA)	(aA) in the case of contravention contemplated in section 157A, to- (i) a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment; and ~~(ii) a permanent prohibition on applying for a debt intervention;~~ [our amendments]	Since clause 88A(2) provides that a debt intervention applicant may <u>apply only once</u> for debt intervention, a permanent prohibition on applying for debt intervention is of no value and is not of any use as a deterrent, unless debt intervention is possible more than once: as granted by the NCR and by the Minister.
161(1)(aB)	(aB) in the case of a contravention contemplated in section 157B or 157C to a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10 per cent of its annual turnover or R1,000,000, whichever amount is the greater	What research has been done to justify the penalties proposed for a contravention of clause 157B and that they will be effective?

161(4)	Despite anything to the contrary contained in any other law, a magistrate's court has jurisdiction to impose any penalty provided for in this Act	One would assume that, as a creature of statute, a magistrates' court will still have to adhere to its jurisdictional limits, hence it will not be in a position to impose <u>any</u> penalty. Furthermore, the word "penalty" needs to be changed. It is not clear if it includes administrative fines or only criminal fines for offences.
165(2)	The NCT may change or rescind an order – (a) if information is placed before the NCT showing that a party to the proceedings was dishonest in respect of any fact or argument placed before the NCT; or (b) if the person affected by that order fails to comply with the conditions of the order or fails to comply with this Act	Legal costs will be incurred when applying for an application for rescission of an order, which costs will need to be paid by the party who caused the NCT to grant the order in error. Should this party be the debt intervention applicant, how will credit providers be allowed to recoup the legal costs incurred? Such legal costs can be avoided by allowing a credit provider to respond to an application for debt intervention before the NCT makes an order (i.e. application of the *audi alteram partem* rule).
171(1)(bA)	The Minister must make regulations establishing a financial literacy and budgeting skills programme to assist consumers to manage their financial position	Please see comments on page 1 under "general comments".