ANNEXURE A

The market landscape

According to NCR data, household credit granted to borrowers earning up to R7 500 per month has been declining on an annual basis since 2013 while debt to those earning more than R7 500 per month continues to increase, although at a moderate pace.[1] The decline in credit granted to low income earners reflects less credit appetite and tight lending criteria by credit providers. Our rough estimates suggest that the level of indebtedness of borrowers earning up to R7 500 per month improved since 2011, from a high of 100 percent of gross income to 48 percent in 2016. The debt to income ratio of borrowers earning more than R7 500 per month stands at 104 percent, from a high of 138 percent in 2008.

The Bill comes as South Africa is engaged in significant regulatory reform in the financial sector, aimed at ensuring that financial customers – including households and businesses - receive better outcomes, balanced alongside other policy objectives of financial stability, integrity and inclusion. No single policy objective should be looked at in isolation, and achieving one of these objectives should not prevent the achievement of one of the other objectives. Promoting household access to credit should not be done without a solid consumer protection framework, to protect consumers from unscrupulous lenders. Consumer protection requirements on the other hand should not be so stringent that the associated regulatory compliance costs strangle supply. Steps taken to protect consumers should also not unfairly prejudice lenders, especially to the extent that it may impact on their solvency and liquidity. This balancing act is in itself an important policy priority, and one that in our view could be more strongly instilled across all laws governing the financial sector, including the National Credit Act and the National Credit Amendment Bill.

In looking at effects of the Bill on the financial and retail sectors, the Bill is likely to impact banks directly from a reporting perspective rather than from their liquidity or provisioning positions, but these effects should be confirmed. Banks may be affected indirectly through exposures to retailers and related industries. Credit providers in the retail sector may face a more severe impact, particularly given relatively weak household consumption and the difficulties facing the retail sector more broadly. This impact may be significant and should be thoroughly identified and understood. The

[1] Credit granted to borrowers earning up to R7 500 per month declined from an average of R11billion per quarter between 2007 and 2013 to an average of R8.4 billion per quarter between 2014 and 2017, whilst credit granted to borrowers earning up to R7 500 per month increased from an average of R73 billion per quarter to R102 billion per quarter, respectively.

[2] Two thirds of employment is attributed to large enterprises (whose turnover was equal to or greater than R117mn in 2015), and

African Bank (Ellerines) and Steinhoff cases show how credit intermediation has become a significantly larger part of retailers' core business.

Our expectation is that the retail sector will be amongst the most impacted by debt extinguishing, both now and in future, and are concerned about how a destabilized retail sector could compromise economic growth and employment. Nominal retail sales amounted to R870bn in 2016 (equivalent to 21.6 per cent of nominal GDP), comprising largely of sales from general dealers (R413bn or 44.0 per cent of total sales) and retailers of clothing and footwear (R168bn or 17.9 per cent of total sales). The sector is also a key employer, contributing 9 per cent of total formal non-agricultural employment. Year-on-year employment growth in the sector has consistently outperformed overall year-on-year growth in total formal non-agricultural employment.[2] We recommend that possible knock-on impacts between the retail sector and the rest of the economy should be a focal point in the proposed socio-economic impact assessment.

Changes in the credit environment now have meaningful implications for the viability of retailers, with broader possible spillovers to other parts of the economy. Given both the disproportionately large impact this policy proposal will have on the retail industry directly, as well as the fact that retailers are already stressed, this policy should be carefully calibrated. Careful calibration however does not mean inaction but rather sufficient analytical work to ensure minimum risk to jobs in this sector.

It is likely that these proposals will increase the cost of credit for market segments in the debt relief categories, and could have both short and long term impacts on the supply of debt. It will also have implications on who is able to access credit, and through which channels. This in turn has implications for the structure of the credit market, which could for example, favour informal credit providers relative to formal sector ones, or favour banks relative to other types of credit providers, given their greater access to data on the income and expenditure patterns of their customers relative to other banks and non-bank credit providers.

Importance of a comprehensive Socio-Economic Impact Assessment and the National Economic Development and Labour Council (NEDLAC)

Over time, a number of best practices have been cemented into Government's legislative design and approval processes, including the Department of Planning Monitoring and Evaluation (DPME)'s Socio-Economic Impact Assessment System (SEIAS) to ensure a consistent approach to impact assessments of policy, legislation

[2] Two thirds of employment is attributed to large enterprises (whose turnover was equal to or greater than R117mn in 2015), and approximately 80 per cent of employment in the sector is of a permanent basis (defined as those employees appointed on an open-ended contract with no stipulated termination date or fixed-term contract for periods of more than one year).

and regulations, and the submission of legislation through the full NEDLAC process to ensure the comprehensive engagement between government and its social partners. Acknowledging that Parliament operates under a different rules framework to Government and is therefore not legally bound to adhere to these standards, we respectfully encourage the Portfolio Committee on Trade and Industry (the Portfolio Committee) to demonstrate Parliament's commitment to best practice policy implementation and consider following these processes for this Bill, to ensure thorough analysis and stakeholder engagement.

We especially urge the Portfolio Committee to consider the impact of proposals on the broader socio-economy. For example, we expect a notable impact of the proposed relief proposals on the fiscus through reduced tax revenue. The economic impact of the reform will not only depend on the immediate impact on individual households, but the short- and long-run impact of the policy on affected credit providers. This will differ depending on whether credit providers have sold off their non-performing loans, written them down and the general economic prospects facing the different sectors. This assessment could consider the impact on the credit market – its structure and pricing – and on the intended beneficiaries as well, be it increased consumption expenditure or greater debt servicing of other debt. In other words, is the relief intended just to help individuals or are there wider benefits such as relief of claims on the state for grant benefits or reallocated spend of those consumers of monies that would otherwise be servicing debt?

Implementing a twin peaks approach to financial regulation

Any legislative changes that affect the financial sector should take into account the broader regulatory reform underway. Cabinet in 2011 approved the shift toward a Twin Peaks model of financial regulation in South Africa, as proposed in the discussion document "*A Safer Financial Sector to Serve South Africa Better*." This was followed in 2013 by the Twin Peaks roadmap document, "*Implementing a Twin Peaks Model of Financial Regulation in South Africa*".

The Twin Peaks reforms aim to significantly streamline and harmonise regulation and supervision across the sector, recognizing that the current fragmented and silo-approach has resulted in regulatory gaps and duplications, and regulatory arbitrage, which allow poor outcomes to persist in the sector. Persistent poor outcomes in the retail credit sector that is regulated by three financial sector regulators - the National Credit Regulator (NCR), South African Reserve Bank (SARB) and Financial Services Board (FSB) – illustrates the point.

Responding to increased complexity and connectedness of South Africa's financial sector including credit providers, the Financial Sector Regulation Act (FSRA) introduces a single, coordinated and harmonized approach to financial regulation and supervision. In addition, improved protection of financial customers and stronger market conduct oversight of financial institutions are key goals of the Twin Peaks regulatory reform process. The FSRA was passed in August 2017 and the process of implementing this Act is underway. The Act provides for stronger market conduct oversight over credit providers, giving a role to the new conduct regulator, the Financial Sector Conduct Authority, to work alongside and support the NCR. It also strengthens transparency and accountability of Government and regulators, providing for increased cooperation and coordination across these entities, and much stronger stakeholder engagement requirements in making regulations, which include producing an explanatory document, impact assessment and report on consultation, with a prescribed 6 weeks minimum consultation period[3].

The reforms aim to shift regulation and supervision in the sector away from relying only on rules-based, compliance-focused approaches – which have often proven less effective – toward more principles-based and outcomes-focused approaches. The shift will assist in entrenching a pre-emptive approach to supervision, which prevents problems from arising, rather than reacting to problems once they emerge, sometimes resulting in drastic interventions being required, especially where the problems have become endemic. In retail credit, a pre-emptive and outcomes based approach would imply taking a system-wide view by the regulator, to ask whether customers are getting credit that they can afford and can repay sustainably, in addition to monitoring compliance with regulatory rules in place. High levels of over-indebtedness indicated by high levels of default would suggest that in fact this is not happening, and that notwithstanding the current regulatory requirements, customers may not be getting levels of debt that they can sustainably manage. If such features are observed, this should be addressed at the root-cause level.

Reform in the regulatory oversight of retail credit (inputs relating to insurance in this Annexure take into account engagement with the Insurance Department of the FSB)

In December 2013 Cabinet authorised the Ministers of Finance and Trade and Industry to take measures to assist over-indebted households and also prevent them from becoming over-indebted in future.

[3] See Part 1 of Chapter 7 of the FSRA.

To give effect to some of the identified measures, Parliament amended the National Credit Act, 2005 (Act No. 34 of 2005) (NCA) by enacting the National Credit Amendment Act (NCAA) of 2014. The NCAA together with the National Credit Regulations came into effect during 2015, introducing *inter alia* the criteria for affordability assessments, powers of the NCR to investigate reckless lending and the powers of the National Consumer Tribunal (NCT) to adjudicate reckless lending matters. These measures together with interest-rate pricing caps, credit insurance price caps introduced between the dti and National Treasury (see detail on the broader review of business practices in the consumer credit insurance (CCI) sector below), and steps taken by the SARB to regulate loans secured by payroll deductions and debit orders in general, aim to prevent future over-indebtedness.

Other improvements taken to relieve current indebtedness include: strengthening the Debt Counselling Rules System (DCRS) to provide relief by lenders to qualifying distressed borrowers, lenders and especially banks withdrawing certain Emolument Attachment (garnishee) Orders, employers including Government reviewing and taking steps against irregular EAOs issued against employees, and the Department of Justice strengthening laws governing debt collection.

It is crucial that these efforts be acknowledged, understood and evaluated over time, in order to inform any further debt relief measures that may be imposed. As a matter of principle, the National Treasury would prefer to continue exploring ways to make existing channels more effective rather than rely on the extinguishing of debt as a regulatory tool, as is implied by the new Clause 88F. For example, the DCRS could be leveraged, and adjusted if necessary to enable it to solve for persons with incomes below R7500 over a reasonable time period, provided that innovative ways are found to cover the associated debt counseling fees. One way would be to pay fees out of the accumulated debt accrued to the last lenders; in other words, those lenders who lent last will cover the costs first. This could mitigate the need for subsequent debt relief interventions. We would appreciate the opportunity to explore such options with the Portfolio Committee.

Review of business practices in the consumer credit insurance sector in South Africa and recent regulatory reforms

We wish to draw your attention to the review initiated by the National Treasury and FSB of business practices in the CCI sector in South Africa, which resulted in the publication of a Technical Report on the Consumer Credit Insurance Market in South Africa for public comment in 2014. The technical report was published as an initial step, with the aim of signalling concerns with respect to consumer abuses in the CCI market. The main areas of concern may be summarised as follows:

- **Lack of transparency in the total cost of credit:** The full cost of credit, including the cost of CCI, is not fully disclosed. In addition, disclosure of commission and fees is opaque.

- **High premiums and different pricing:** Premiums tend to be higher when a risk is insured under a CCI policy, than where a similar risk is insured under a standalone insurance policy.

- **Product differentiation limits comparison:** Variance between CCI product features limits product comparability and substitutability, with questionable competition benefits. Examples include different forms of cover for employment related events.

- **CCI cover does not meet the needs of the target market:** Some business models offer policy benefits that many in the target market might not actually be eligible for and by implication can never claim against. An example is retrenchment cover benefits offered to customers who are pensioners or self-employed.

A broad section of industry players and associations from across the credit and insurance markets provided comment and feedback on the technical report and the proposals therein. Based on the comments received and further engagements with stakeholders the FSB and National Treasury then introduced a number of amendments to existing insurance related legislation as part of its regulatory reform, which became effective on 1 January 2018. The aim of these amendments is to address and curb the abuses identified in this market and to enhance the insurance regulatory framework to achieve better outcomes for consumers, dealing with matters of broker commission, marketing and disclosure, claims, complaints, and alignment with regulations made by the Minister of Trade and Industry relating to CCI.

Other FSB initiatives that focus on the supervision of the CCI market include enhanced reporting requirements to better monitor the incidence of abuse in the CCI market through the introduction of prescribed Conduct of Business Returns to the FSB. The information in these returns will aid the FSB in supervising and measuring fair outcomes to consumers, and will also enable informed assessment of the reasonableness of the pricing of these products.

We are of the view that the above regulatory and supervisory measures that have been put into place will go a long way to address the abuses identified through the review of the CCI market.

Additional principles proposed for explanatory memo

In support of transparency and policy certainty, it is proposed that the Portfolio Committee considers stating its guiding principles that inform the Bill, for example:

- In considering different solutions for different "categories" of distressed persons, depending on their circumstances (e.g. income, assets, secured versus unsecured debt), existing measures to relieve debt pressures should be exhausted before turning to debt extinguishment.

- If a person can pay, he or she should pay (unless the loan was granted recklessly);

- Relief interventions are seen as a last and necessary resort, where the NCA and NCR are the first line of defense, promoting responsible lending and promoting secured over unsecured lending (especially for homes);

- Relief interventions should promote responsible borrowing, including changing behaviour, promoting borrowing for capital growth rather than consumption and within affordable and sustainable limits

- Relief interventions should mitigate moral hazard on both sides of the credit transaction;

- Extinguishing of debt should only apply to unsecured loans, with the focus on no or low income borrowers (those groups who cannot afford debt review);

- Borrower assets should be reasonably protected; selling assets should be absolute last resort, and where done should be done fairly and with dignity;

- A cooperative and well-coordinated response is preferred, to be a shared responsibility across government, bank and non-bank credit providers, debt collectors and debt counsellors; and

- A comprehensive impact assessment is preferred in support of evidenced-based policy and regulation.

Understanding the debt intervention proposals within the context of international experience

The new section 88F appears to lie beyond the international evidence on debt relief, as described in the table below.

Programme	Salient features	Implementation
Croatia "Fresh Start"	• One –off measure, passed by parliament	• Measure agreed between Prime Minister and relevant creditors • Subsequently voted on by Croatian Parliament
India Debt Waiver and Debt Relief Scheme for Small and Marginal Farmers	• Banks were reimbursed in full by the Indian government, so it did not amount to a deprivation of the creditors' property.	• Announced by Minister of Finance in 2008 budget • Subject to Cabinet approval
USA "Obama Student Loan Forgiveness Scheme"	• Scheme applies specifically to federal loans i.e. loans made by the US government (through the Department of Education). Since the Government is the creditor, no legislation to implement these measures is necessary	
New Zealand, England and Wales NINA provisions	• All of these measures, (incl. for example the requisite eligibility criteria etc.), are codified in relevant legislation as passed by the respective parliaments.	
USA and Japan Bankruptcy provisions		
United Kingdom, Australia and USA Reckless lending provisions and market conduct abuses		

It is therefore our understanding that none of the international examples discussed in "The Feasibility of a Debt Forgiveness Programme in South Africa" (prepared for the NCR by Eighty20) have entailed the broad powers that the Bill proposes conferring on the Minister of Trade and Industry. We would appreciate further discussion on this point.

Importance of a communication strategy

A very careful communication strategy around who qualifies for the debt relief could be considered, in order to ensure reasonable expectations by potential applicants and support effective implementation. This could specify the circumstances under which relief will be granted, how to obtain the relief, the implications of the relief, obligations and responsibilities of the applicant in relation to relief sought, and how to obtain a "clean slate" (and what that means for any new credit).

The National Credit Amendment Bill – clause by clause comments and proposals[4]

Proposed new clauses

- In line with what we understand to be the intension of the Bill, such that it applies only to unsecured debt, we recommend in the interests of certainty and clarity that this principle be explicitly stated; it is currently only implied in the new section 88A(2).

- In relation to the immediate relief proposed, and in line with what we understand to be the intension of the Bill that this is a once-off relief (subsequent relief is proposed through Regulation), we recommend that this "once-only" principle be explicitly stated; it is currently only implied in the new section 88A(2). We also propose that additional Minister Regulation powers are given in order to set procedural rules and timelines for debt intervention applicants. For example, how must an applicant apply, and by when? What is the cut-off date for assessment by the NCR and Tribunal?

- It is further proposed that the Bill explicitly state the basis for qualification of debt relief, both for NCR and Tribunal assessments. Currently it is not clear whether the basis is:
  - A borrower is earning below R7500 per month, has no realisable assets as defined, and has an accumulated debt less than R50 000
    or
  - applicant fits within these same thresholds and additionally must show that he or she cannot afford repayments.

Clause	Comment
Description of the Bill: "to enable the Minister to prescribe a debt intervention"	See comment on new section 88F.
Description of the Bill: "to provide for mandatory credit life insurance"	See comment on clause 17.
Description of the Bill: "to provide for offences related to debt intervention, prohibited credit practices, reckless lending, selling or collecting prescribed debt	Consider whether these should be offences; administrative sanctions may be easier to enforce.

[4] Comments on clause 106 take into account engament with the FSB, as the insurance regulator.

and related to failure to register"	
Description of the Bill: "Minister to prescribe a financial literacy and budgeting skills programme"	See comment on new section 88C(5)(d).
Preamble	Propose including the balancing objective of financial stability, possibly as a secondary or supporting objective.
Preamble: "WHEREAS the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), 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"	We remain concerned that actions taken using these powers may not promote an industry that is sustainable, efficient or accessible, putting additional strain on balance sheets to the advantage of larger businesses especially banks, and will increase the cost of credit of borrowers considered to be positioned in a category "likely" for debt extinguishment
Preamble: AND WHEREAS there are categories of consumers for whom existing debt interventions, contained in legislation such as the Insolvency Act, 1936 (Act No. 24 of 1936), the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), **and the National Credit Act, 2005 (Act No. 34 of 2005), are inaccessible**, either because of the focus these Acts place on benefit to credit providers, or the cost involved with such debt interventions;	This section notes challenges with the NCA (see emphasis) – and noting the original representations by the dti on improvements, it seems that these proposals have been omitted. It would be preferred for these reforms to be included in the bill, to try and deal with root problems identfied. It may be useful for the Portfolio Committee to consider an outcomes focus – what outcome would be expected of the credit industry, against which our regulators can be held accountable?
1. (Amendment of section 3 of Act 34 of 2005)	It is proposed that the term 'debt intervention' inserted into subsection (i) be defined.
1. (Amendment of section 3 of Act 34 of 2005)	The meaning of the following words, proposed to be inserted in subsection (i), are not clear: "where the consumer's financial situation so allows, or may so allow in the foreseeable future.''
4. (Amendment of section 15 of Act 34 of 2005)	Regarding the proposed insertion of **(hB):**

	Could additional clarity be given on the meaning of the new section 80(2)? It is proposed that amendments could be made that make reckless lending easier to prove – in the current provisions, how is it envisaged for a loan to be proved reckless? We propose that the Portfolio Committee looks at cases to see whether the current affordability regulations have led to desired outcomes.
7. (Amendment of section 60 of Act 34 of 2005)	Propose that the amendment may be unnecessary.
8. (Amendment of section 69 of Act 34 of 2005)	**Proposed insertion of 1(A):** Notwithstanding (7), It would be useful to clarify what this register will be used for, and by whom? Will it be made public? While supporting the need for such a register in principle, it is not clear about the cost of such a register and the resources/capacity required of the NCR to run it. It would also be useful to get more information in this regard. Currently reporting is done through the credit bureaux.
14. (Addition of Part E in Chapter 4 of Act 34 of 2005)	**88A(1)(a):** It is proposed that "debt intervention" be defined. Propose that need to specify in this section relating to "debt intervention applicant" that for the purpose of this law, a "debt intervention applicant" applies only to unsecured debt. Although the law implies that this refers only to unsecured debt as per 88A(1)(c) read with 88(2), this definition of "debt intervention applicant" would be much wider; it should be accordingly narrowed. For clarity, we would appreciate understanding why "disabled person, a minor heading a household, or a woman heading a household" are specifically mentioned.
	88A(1)(b): On the definition of "realisable asset", the PCTI may consider excluding one RDP house from this list of realisable assets that could be liquidated to payoff outstanding debt. In other words, while we agree that housing in general could be liquidated in order to pay off debt, it is proposed that should a borrower be living in his or her own RDP house, this house should be protected, and not be sold to pay debt. Noting that there are abuses in the system such that certain individuals hold multiple RDP homes, it is proposed that this protection be limited to one RDP house.

	88A(1)(c): Total unsecured debt: It is proposed that this definition be clearer to determine whether this refers to the capital amount only, capital plus interest, or capital plus interest plus any other fees related to the collection of that debt, including legal fees. Our view is that the Bill should cap only the capital plus interest amount; any fees imposed above that should be uncapped e.g. someone has a debt of R30 000 relating to capital and interest, but owes another R30 000 because of other fees and charges related to the collection of the original debt. It is our view that the original R30 000 fits under the R50 000 threshold and so means the borrower can apply for debt relief for the whole amount of R60 000. It is further proposed that this be explicitly spelled out in the Bill.
	88A(2) ***(and similar clauses)*****:** Wording suggests that debt that has been on-sold by credit providers to debt collectors, lies outside of this framework; we propose that this should not be the case on the grounds that many South Africans holding this debt are those that are most desperate and not repaying (which is why it has been on-sold). Therefore propose adding in: …credit providers **<u>or persons collecting on credit agreements</u>**
	88A(4): Agree in principle, but practically, what is being contemplated here? How can an applicant prove that he or she does not have income… is this a bank statement, or a filled out form, for example? How will this happen? There is a more general question here about who is responsible for overseeing this process, and the education and assistance of consumers in this regard.
	88B(1)(b): As per earlier comment, propose that this should be extended beyond credit providers to include those collecting on a credit agreement
	88B(1)(c): As per earlier comment, propose that this should be extended beyond credit providers to include those collecting on a credit agreement Propose should include applicant's "income, **<u>expenses</u>**, assets and liabilities"
	88B(4)(a):

	Propose that it may need to be clearer on what basis an applicant qualifies or does not qualify. Specifically: does an applicant qualify solely by having an income less than R7500, no assets as defined and unsecured debt less than R50000? If so, this could be explicitly stated. Alternatively, are those first order thresholds, and then the applicant has to prove that he or she cannot pay based on your income/expenses sheet? If so, this could be explicitly stated. For clarity, it would be useful to understand in 88C(2)(a) on what basis would this decision be made. **88C(2)(c)(i):** For clarity, on what basis will this view be formed, is it in effect an affordability assessment? Could more guidance be given, e.g. that repayments not exceed 25% of individual (not household) income. For clarity, what is being considered as grounds that debt counseling would not be effective? Not clear what 'Provided that the maximum interest, fee or other charge may be zero' means – can there be no interest or other fees/charges?
	88C(5)(a): Propose that any order that changes repayment should be required to be communicated to the bureau. **88C(5)(d):** Consider overlap with the National Consumer Financial Education Committee currently chaired by the National Treasury. Ideally Government and its agencies should coordinate efforts, especially considering the role of the new Financial Sector Conduct Authority. We would welcome an opportunity to talk about the national financial sector education initiatives underway.
	88D(1)(a): Propose that this obligation be placed on the person setting the charges i.e. credit providers and debt collectors (including law firms) cannot impose additional fees on the applicant in relation to existing unsecured credit agreements. Similarly, who is this imposing an obligation on: the applicant or the credit provider? Unclear if the obligation is on the applicant or credit provider or both.
	88(D)(4):

	Propose that this obligation be placed on the person setting the charges i.e. credit providers and debt collectors (including law firms) cannot impose additional fees on the applicant in relation to existing unsecured credit agreements. Similarly, it is unclear whether an obligation is imposed on the applicant or the credit provider in relation to requirement to "not enter into any further credit agreement with a credit provider" and may be worth clarifying. It is also unclear if this obligation is on the applicant or credit provider or both, and may be useful to clarify.
	88(D)(6)(a): Practically speaking, there is a question about how the applicant will know to notify the NCR, amongst his or her other obligations? There may be an incentive to not communicate a positive change, unless it is made clear that he or she can possibly get access to more credit if reverse the order.
	88(F) Debt Intervention to be prescribed: National Treasury believes this clause may unconstitutional, and undermines contractual arrangements, may inadvertently reduce the volume of credit and increase the cost of credit. Additionally, these powers: • Lie beyond the scope of application of the remainder of the Bill. Relief granted directly through the Bill is once-off, and is limited to unsecured loans, as well as to the cases outlined in new section 88A (1) and (2). Our interpretation of the new section 88F(5)(c) is that it creates the scope to extinguish any debt for any person on any basis determined by the Minister, and as a result is overly open-ended. These risks may not be sufficiently mitigated through the consultation and approval process outlined. • Create significant uncertainty for lenders, who will need to factor in the risk of routine and systematic "debt-extinguishing." This in turn can reduce their willingness to lend to certain segments of the market and / or increase the cost of lending to these segments. The extra cost and administration involved may result in certain sectors exiting from the market completely, resulting in cash-strapped borrowers relying structurally more on informal, unregulated credit providers.

	• Compel credit providers to act as insurers, as they are no longer concerned with an individual's credit risk but insurable events for the risk pool as a whole. • Although there is the option of taking out insurance, this will likely add to the total cost of credit, whether the cost is borne directly by borrowers in the form of increased insurance packages, or indirectly, if credit providers seek to self-insure their unsecured loans as a whole book. The credit insurance premium caps give some indication of the expected cost impact.[5] • Are looking forward in time, to address over-indebtedness that could happen in future. However weaknesses in the credit framework that could cause over-indebtedness in future should be dealt with on a preventative basis through the NCA and by the NCR. If a risk, like retrenchment, lies outside the realm of the NCA and NCR such that this law and regulator cannot be in a position to prevent the retrenchment, then it holds that the law is not the correct instrument to extinguish debt linked to retrenchment. It is our view that legislation should ideally seek to strengthen our existing framework, which is already considered a world leader, rather than creating additional mechanisms that increase overall levels of uncertainty and may undermine the NCA and NCR over the time. • It appears to be inconsistent with the international studies cited by the PCTI as basis for these interventions; no countries have adopted this approach in which a Minister is given sweeping powers that can result in the [repeated] deprivation of creditor rights. We therefore recommend that this clause be removed.
	88(F)(5)(c): This clause especially may be unconstitutional, as is extremely wide.
17. (Amendment of section 106 of Act 34 of 2005, as amended by section 30 of	**17(b): proposed insertion of new 1A:** We recognise that the aim of providing for mandatory credit life

[5] The maximum a credit life provider can charge is R4.50 per R1 000 of cover for all credit agreements other than mortgage and affordable-housing mortgage agreements. The cap translates to a maximum permitted charge of R225 for credit life a month on a loan of R50 000 on a level premium method. For mortgage and affordable-housing mortgage agreements, the maximum prescribed cost per month for credit life insurance is R2 per R1 000 of cover.

Act 19 of 2014)	insurance on all credit agreements is to prevent vulnerable consumer groups from falling into over-indebtedness due to changes in their financial circumstances. It should be noted however that credit life insurance can only serve this purpose in limited circumstances: namely where the consumer's inability to service their debt is due to disability, terminal illness, unemployment (retrenchment), or other insurable risk that is likely to impair the consumer's ability to earn an income or meet the obligations under a credit agreement, or as a result of their death (see the definition of "credit life insurance" in the National Credit Act). Accordingly, mandatory credit life insurance will not assist consumers whose indebtedness is not as a result of the event/s insured by the policy. It would be useful to conduct an analysis into the proportion of indebted consumers holding the applicable type of credit, whose plight would indeed be addressed by the introduction of mandatory credit life insurance. For clarity, it would be useful to understand why this is this only for periods exceeding 6 months, considering that shorter-term loans may incur massive fees/charges/penalties for non-payment.
	Proposed insertion of 106(1A) Provides that, where the credit agreement concerned has a term of longer than 6 months and the principal debt does not exceed R50 000 "the affected credit provider and consumer must enter into credit life insurance". This formulation is mistakenly assumes that the credit life insurance is entered into between the credit provider and the consumer. This is not the case. The parties to the credit life insurance are the insurer and the policyholder (which may be either the consumer or the credit provider, depending on the nature of the transaction concerned). Only insurers registered under the Long-term and Short-term Insurance Acts may provide credit life insurance. Accordingly, as currently formulated the provision is not consistent with the primary legislation regulating insurance. If the intention is to compel insurers to enter into credit life insurance policies in these circumstances, we respectfully submit that it is not appropriate for such a measure to be introduced through the National Credit Act, but rather through the Long-term and Short-term Insurance Acts or the Financial Sector Regulation Act. Further, if insurers are to be compelled to provide credit life insurance in the circumstances envisaged, further clarity would be required regarding which insurers should be subject to such an obligation.

	Proposed insertion of 106(2)(c) Requiring insurance cover in respect of a risk that reasonably cannot arise would already be in breach of sub-section (a) of section 106(2). The existing credit life insurance regulations made by the Minister of Trade and Industry under section 171 of the NCA also already prohibit specific abuses such as requiring unemployed consumers to purchase retrenchment cover or requiring pensioners to purchase employment related disability cover. We also point out that Policyholder Protection Rules issued under the insurance laws include detailed provisions relating to fair customer treatment by insurers in relation to product design and product suitability.
	Proposed insertion of 106(8)(b) It is envisaged that "mandatory credit life insurance will enable consumers not to be over-indebted in the event of retrenchment" Currently, credit life insurance issued under section 106(1)(a) of the NCA must provide retrenchment benefits (where the consumer is employed) in addition to death benefits and disability benefits. We assume therefore, that in addition to determining the cost of the mandatory credit life insurance under the new section 106(1A), the envisaged determination will similarly need to prescribe the types and combinations of benefits that these new mandatory policies must provide. A related question is whether all such policies must include retrenchment benefits (where the consumer is employed) and, if retrenchment benefits are not provided (including in the case of unemployed consumers), whether mandatory credit life cover for death and/or disability remains a requirement. It should also be noted that, if insurers are to be compelled to provide specific types of cover rather than having a choice as to whether or not they wish to underwrite these risks, as is currently the case, this is likely to have an impact on the risk-based actuarial pricing assumptions of this cover.

	The introduction of mandatory credit life insurance in the manner proposed also means that it will no longer be possible for credit providers to choose to “self-insure” against so-called “no fault” credit defaults by securing their own insurance cover against such risks. It will instead be compulsory for the affected credit providers to require the consumer to enter into a policy in each case.
	Proposed insertion of 171(bA) We are concerned that there is a risk of duplication and confusion with the mandate of the future Financial Sector Conduct Authority under section 57(b)(ii) of the Financial Sector Regulation Act of “providing financial customers and potential financial customers with financial education programs, and otherwise promoting financial literacy and the ability of financial customers and potential financial customers to make sound financial decisions” and with its function under section 58(1)(j) of that Act to "formulate and implement strategies and programs for financial education for the general public.” As mentioned above, it is proposed that overlap with National Financial Consumer Education Committee be considered and efforts coordinated to avoid duplication.