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**SUBMISSION TO THE DEPARTMENT OF TRADE AND INDUSTRY ON THE DRAFT AMENDMENTS TO THE NATIONAL CREDIT ACT NO. 41274**

**OF 24 NOVEMBER 2017**

**12 FEBRUARY 2018**

1. **INTRODUCTION TO BLACK SASH**
	1. The Black Sash Trust (Black Sash) welcomes the opportunity to make submissions of the amendments to the National Credit Act 34 of 2005.
	2. Our submission is informed by our work with the Department of Social Development and South African Social Security Agency to stop unlawful deductions, as well as various court proceedings, education and related community monitoring and advocacy. Working towards the realisation of socio-economic rights, with emphasis on social security and social protection for the most vulnerable, we welcome the amendments to alleviate the struggles of the indigent by providing them with a life line to get out of the pit of debt and transform their lives for the better.
2. **CONTEXTUALISING THE INTEREST OF BLACK SASH**
	1. Black Sash submits that the protection of social grants from unlawful deductions is a critical element of the right to Social Security/Assistance as set out in International Law, in accordance with the South African Constitution and in Jurisprudence. Providing social assistance also includes providing social protection, which in this instance means protecting and securing the accounts of social grant recipients from unauthorized and unlawful deductions**.**
3. **STATE OBLIGATION**
	1. There is an onus on the state to enact legislation by ensuring the payment of social grants in full and which is ring fenced from unlawful deductions through reckless lending.
4. **BLACK SASH AND THE NATIONAL CREDIT ACT (NCA)**
	1. Black Sash acknowledges the objective and purpose of the NCA and believes that over-indebtedness is a social and economic challenge that has far reaching consequences for the most vulnerable social grant recipients. Grant recipients are easy targets for moneylenders because they receive guaranteed income from the state.
5. **SASSA RECIPIENTS AND UNLAWFUL DEDUCTIONS**
	1. Grant recipients have SASSA bank cards which are serviced by Cash Payment Services (CPS) who provide the card technology and manage the card programme on behalf of the government of South Africa and facilitated through Grindrod bank. The SASSA contract with CPS facilitated the opening of approximately 11 million SASSA bank accounts by CPS via Grindrod Bank for approximately 17 million grant recipients.
	2. In June 2015 Grindrod Bank with Moneyline, a subsidiary of Net1, opened up the Easypay Everywhere Bank account known as the “Green Card”. This EPE card has fuelled indebtedness as many loan sharks use this card to provide loans often with **no affordability tests**, no proper avenues of recourse, no administrative justice and **no debt counselling.** Grant recipients are trapped in a vicious cycle, using debt to pay debt to pay for food and basic living needs.
	3. To date there are 2.3 million recipients who have EPE cards which is an indicator of how many grant recipients have loans.
6. **DO THE AMENDMENTS ADDRESS OVER INDEBTEDNESS OF POOR?**
	1. Over-indebtedness is a social and economic challenge with far reaching consequences for vulnerable social grant recipients. Social grant recipients can become easy prey for moneylenders as they are receiving a guaranteed monthly income from the state.
	2. Grant recipients whose bank accounts have a debit order facility that can secure loan deductions, with easy access to confidential data- is placed in a precarious position, especially when no affordability tests have been done, there are no proper avenues of recourse, no administrative justice and no debt counselling.
	3. Grant recipients are trapped in a vicious cycle of debt, using debt to pay debt for food and basic living needs.
	4. Social grants is used as collateral for loans
7. **DEBT INTERVENTION APPLICATION CRITERIA Section 88A**
	1. We welcome the threshold of R7, 500 for debt intervention as this will cover many social grant recipients.
	2. Under Section 88A (1) (b) realisable assets are too low and the amount should be increased to R25, 000. Basic household assets often exceed the R10, 000 limit.
	3. Insert under realisable assets (b)”but does not include”… a RDP house or property provided by government. The elderly, the disabled, women and children need the protection of a secure home.
	4. Section 88A (2) makes provision for one application for debt intervention. We are of the view that this should be amended to at least two, given that small crises increase the vulnerability of the very poor.
8. **EVALUATION OF APPLICATION FOR DEBT INTERVENTION Section 88B p.16**
	1. The prescribed forms and procedure must be user friendly and easy to understand with clear guidelines and a step-by-step process.
	2. The current application procedure excludes the option to appeal a negative outcome. We think this is an important step to insert so that applicants may have a right to recourse.
	3. The amendments which allow for debt counseling under Section 88B (4)(b), orders for financial literacy or budgeting skills programmes under Section 88C (5)(d)must be free.
9. **LIMITING CONDITIONS TO APPLY FOR INTERVENTION Section 88A (2)**
	1. Section 88A (2) limits the amount of unsecured debt to R50,000 and (3)(a) sets out which types of unsecured debt do NOT qualify for debt intervention.
	2. When children reach 18 years of age, they no longer qualify for the Child Support Grant (CSG) – they are compliantly reliant on bursaries and loans to fund their tertiary education including accommodation and food. The likelihood of securing employment immediately after completing their studies is highly unlikely given the current economic situation.
	3. The limitation should not exclude educational loans under Section 88A (3) (a) as contemplated in section 10 of the NCA. The threshold level for unsecured debt under section 88A (2) should be increased to at least R100, 000 for education.
10. **ORDERS RELATING TO DEBT INTERVENTION Section 88C pg18**

**10.1** We commend you on the simplicity of having a single member consider the

 application for the sake of accessibility and expediency. However, bias and partiality of a single member may result in negative income and must allow for a right of review and appeal process. Section 88C p.18 (4) p.20 making provision for the extinguishment of the debt is commendable.

**10.2** Section 88 C (7) p.21: The time period limiting an applicant from applying for credit for

 36 months should be reduced to 24 months.

1. **EFFECT OF DEBT INTERVENTION Section 88D p.21**

**11.1** The right of the Tribunal to rescind or change an order where the applicant has not complied with the order may only be made after investigating the reasons for noncompliance- if the applicant acted in good faith and circumstances was beyond his control to comply it should not be rescinded and rather be extended for a further period.

1. **IN CONCLUSION**

**12.1** The Black Sash generally supports the amendment to make provision for debt intervention to accommodate those who are grant recipients who are considered as a vulnerable group for unsecured debt- taking into account their vulnerability exploiting their struggle to make ends meet while having secure income. The adverse impact of loans on recipients, especially where the loans are provided fraudulently, illegally and unlawfully by reckless lenders must be considered to protect recipients and impose harsh penalties on credit providers who are reckless lenders.

**12.2** The application process for debt intervention must be simplified to be user friendly with prescribed forms.