

No.	Name	Summary of submissions	The dti, NCR and NCT response
1.	Wonga	<p>Wonga support the proposed financial literacy and budgeting skills programme.</p> <p>Wonga also support the introduction of compulsory credit life insurance for longer term loans</p> <p>Wonga submit that their constitutional rights to property will be infringed by the Bill in a manner that is not reasonable and justifiable.</p> <p>They are concerned that only unsecured debt should be targeted.</p> <p>Wonga believes there is an onerous obligation placed on credit providers to report suspected reckless credit agreements to the National Credit Regulator</p> <p>Even if the credit provider complied with all the provisions of the NCA and its regulations, there could be a debt intervention process, which denies the credit provider input into the process, and focused exclusively on the circumstances of the debtor.</p> <p>Wonga will exclude these consumers due to the high risk associated with them. Wonga submits that the Bill will have the unintended consequence of forcing more consumers to utilise the illegal, unregulated credit market.</p> <p>Section 88F of the Bill proposes that the Minister may prescribe debt intervention measures, including “declaring debts under a credit agreement as extinguished”. This would apply even in circumstances where the credit provider has granted credit fully in compliance with the provisions of the Act.</p> <p>The Bill envisages a regime where a single member of the Tribunal may make a determination “with reference to the documents included in the referral from</p>	<p>The constitutionality of the Bill can be enhanced by:</p> <p>Circumscribing factors to be considered by Tribunal to extinguish debt- e.g. whether a consumer has any chances of getting employment in the future, permanent disability, family circumstances, age of the consumer, prescription, voluntary write-offs.</p> <p><i>Audi alteram</i> principle to be observed through negotiation of new payment terms with all credit providers and at Tribunal hearings.</p> <p>Prioritizing of orders – interest rate reductions, restructure, alternatively suspension, and if payment plan does not solve, extinguish portion of debt.</p>

		the NCR only, without any further evidence being led" [Section 88C] i.e. without any input or representations having being made by the credit provider in the instance where there is a dispute as to whether there should be a "debt intervention". The credit provider is not involved in the process at any stage prior to the matter being referred to the NCR.	
2.	Micro Finance South Africa	<p>Section 88A (1)(a) and C: A Means Test should be conducted for all consumers to ascertain a profile of consumers who may be indebted. Factors such as: Whether there is a joint income, tribal land, Household expenses and whether the consumer has dependents should be taken into account.</p> <p>Section 70(1)(a) and 2: MFSA agrees that applicants under Debt Intervention must be listed with the credit bureaus reflecting reasons thereof.</p> <p>Section 88A(1): A consumer's monthly income cannot be the determining factor on whether a consumer is legible for debt intervention.</p> <p>Section 88A(2) and section 88B Applicants are to submit application forms and it should be clear who will oversee the debt intervention process. A "Means Test" must be utilised at application stage to determine the financial circumstances of the consumer prior to and during the debt intervention.</p> <p>Section 88C: Consumers granted debt relief should not be enabled to incur further debt for a specified period and be subject to rehabilitation programme.</p> <p>Section 88C (3) (c): MFSA states that the Credit Life Regulations have not been appropriately evaluated and therefore request feedback on the implementation of the Regulations especially with concern to micro-financiers.</p> <p>Section 88C(4): Debt should not be</p>	<p>We support the compulsory credit life insurance, but recommend a consultative process for pricing/costing in line with section 106.</p> <p>Prioritizing of orders – interest rate reductions, restructure, alternatively suspension, and if payment plan does not solve, extinguish portion of debt.</p>

		<p>written off ,but instead a credit provider can cease the accumulation of fees and interest until such a time that the consumer is able to make payment. The credit bureaus should be notified of same and the consumers flagged accordingly.</p> <p>MFSA submits that the Bill will make it more difficult for the targeted consumers to access further credit.</p> <p>Section 88C: Unemployment should not be an automatic qualification for debt intervention.</p> <p>Consumers must show that they have exhausted all available measures-including where the credit providers freezes the consumer's account until such time that the consumer is employed and or is able to pay their debts.</p> <p>Should a consumer never resume employment, the onus is on the credit provider to consider certain factors and thus accept writing off the debt.</p>	
3.	Nedbank	<p>It is impractical and unreasonable to place the onus on credit providers to report a reasonably suspected reckless credit agreement and that a credit provider will be fined for failure to do so.</p> <p>Without access to the information utilised by the previous credit provider, a credit provider would not be able to conclude whether or not a credit agreement is reckless.</p> <p>Debt counsellors have not been provided the criteria to conclude whether or not a credit agreement is reckless. Mere suspicions from the debt counsellor would create an influx of complaints wherein the credit provider has not been provided the opportunity to rebut the suspicion.</p> <p>Mere suspicion of reckless lending should not be sufficient to suspend a credit agreement as this affects both the consumer and credit provider in that should the credit agreement be found not reckless, the consumer is liable for all fees from suspension of the credit agreement and if the credit agreement is suspended, the credit provider does not</p>	<p>Credit providers will not sufficient information to make assessment.</p> <p>Competition amongst credit providers.</p> <p>However we support criminalize Debt Counsellors' failure to report alleged reckless loans to courts.</p> <p>Criminalization of prohibited conduct is supported.</p> <p>Directors and owners of the credit providers to be liable for the actions of the responsible juristic person.</p> <p>Proposal that the drafting be aligned to cartels provisions in Competition Act.</p>

		<p>receive payments due.</p> <p>The Bill's relief to suspend credit agreements as well as extinguish debt does not achieve the goal of relieving over-indebtedness. Instead this creates the impression to consumers that they may incur credit and default on their debts without any repercussions.</p> <p>This may result in credit providers restricting credit to consumers where stability of repayment cannot be guaranteed thus reducing access to credit even more.</p> <p>The Debt Intervention Bill isolates debt relief in that it is for the lower earning class.</p> <p>Insurance is offered by insurance companies and not credit providers therefore Nedbank does not have the authority to enter into credit life insurance with consumers whose loan fall under Section 106(1A).</p> <p>Where there is non-compliance of the Act, intention must be demonstrated to constitute an offence related to credit agreements. For example, the intention to provide false information for the application of debt intervention.</p>	
4.	Prof Kelly-Louw- Unisa	<p>Section 3(g) and (h): The objectives of the NCA should not be amended as proposed by the Debt Intervention Bill.</p> <p>Section 82A(1): Credit providers should not be obliged to investigate reckless lending by another credit provider as they would not have access to all the consumer's information relied on at the time of entering into the credit agreement. If the reckless lending relates to the same credit provider, would that credit provider report themselves?</p> <p>Section 88A-E: The R7500 income and the R50 000 total debt as at 24 November 2017 thresholds should be amended to include consumers with no realizable assets, no income and with continuous</p>	<p>Credit providers will not have sufficient information to make assessment.</p> <p>Competition amongst credit providers.</p> <p>However we support criminalize Debt Counsellors' failure to report alleged reckless loans to courts. Criminalization of prohibited conduct is supported.</p> <p>We support the provision, but foresee the following effects: The accumulation of capital & cost of credit during suspension- especially should the reckless loan not be</p>

		<p>debt.</p> <p>Merely writing off a debt if a consumer has no income or is unemployed should not be easily implemented. There must be distinction between a consumer who voluntarily leaves employment and a consumer retrenched.</p> <p>Excluding certain credit agreements (developmental) is not desirable and creates loopholes as a consumer/ credit provider can simply describe an agreement as the excluded agreements to avoid the Bill.</p> <p>The Bill does not consider administration orders. The consumer can be under both administration and debt intervention which is undesirable as more focus could be given to rather finding a single, cheaper, effective debt alleviation mechanism.</p> <p>The Tribunal's power on the orders it may make regarding Debt Intervention is too wide.</p> <p>The period of not exceeding 12 months is too long.</p> <p>The suspension period in Section 88C(3) is excessive. Consumers should rather be provided moratorium (period in which a consumer is not required to make payments). It must be noted that during the suspension period the debt might prescribe and the Bill does not provide clarity on same.</p> <p>The credit provider is not provided the chance to partake in the debt intervention application process. This does not balance the rights of the consumer and credit provider.</p> <p>Section 88D(5): allows a consumer under intervention to still apply for credit, developmental credit.</p> <p>A consumer under intervention should not be able to apply for any other type of debt irrespective of what type of credit.</p> <p>Section 88F(2)(a) and section 88F(3)(b) are in conflict as it is not clear whether the section refers to consumers that are unemployed or those who earn a salary.</p> <p>The section should refer to consumer who are unemployed and remained so for long</p>	<p>confirmed by the Tribunal or court.</p> <p>Usage of assets whilst not making any payments during suspension (cars, houses, furniture).</p> <p>Suspension should be made subject some conditions, such as the return of assets during the suspension period.</p>
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		<p>period as opposed to consumers earning an income (who should therefore settle their debts).</p> <p>The power to declare a credit agreement unlawful should remain that of the court. The Powers set out in Section 90(4) should not be extended to the Tribunal. It should be considered whether a penalty of “imprisonment of 10 years” is desirable regarding the offences listed in Section 161(1).</p>	
5.	South African Institute of professional accountants	<p>Section 82A(6): Consumer may be prejudiced regarding the interest that may accumulate during the suspension period of the credit agreement.</p> <p>Section 88A(1)(a) should be extended to include under 21 year old individuals/s unemployed and heading a household.</p> <p>Section 88A(b)(v): The definition of “immediate household” needs to be defined.</p> <p>Section 88A(1)(g): Clarity I to be provided on who may prescribe the information concerned. Is it the Minister, Regulator, Tribunal or the Courts?</p> <p>Section 88B(1)(a) and (b):</p> <p>What is the time frame in which the NCR must provide the applicant with proof of receipt of the debt intervention application?</p> <p>Within what time frame will the NCR notify credit providers and credit bureaus of the consumer’s application?</p> <p>Section 88C(9): The period for setting the application down for reconsideration should be prescribed.</p> <p>Section 88D(6)(b): This section should be applicable to any credit provider impacted by the debt intervention order should such credit provider reasonably believe that the financial circumstances of the debt intervention applicant have improved.</p> <p>Section 157C(2)(a): What is the</p>	<p>We support the provision, but foresee the following effects:</p> <p>The accumulation of capital & cost of credit during suspension- especially should the reckless loan not be confirmed by the Tribunal or court.</p> <p>Usage of assets whilst not making any payments during suspension (cars, houses, furniture).</p> <p>Suspension should be made subject some conditions, such as the return of assets during the suspension period.</p>

		consequence should the application not be granted? The section should only apply subject to an application being granted.	
6.	COSATU	COSATU submits that they support the Bill and that it be urgently passed.	
7.	Department of Justice and constitutional development.	<p>Section 82A: The heading should be changed to read: Report, investigation and suspension of reckless credit agreement.</p> <p>Section 88A: in the definition of “debt intervention applicant” it should include another person acting on behalf of a minor person as well as the elderly should be included.</p> <p>Section 88A: in the definition of “realizable asset”, it should be provided that the value of the assets should not exceed an amount determined by the Minister. This should be cognisant of Section 67 of the Magistrate Act’s list of property which may not be attached. A definition of “debt Intervention” should be reconsidered to enhance legal certainty. Section 88C referring to the Tribunal’s orders gives an indication of what is meant by debt intervention.</p> <p>Section 88C: it is not clear whether or not a credit provider is able to state their opposition to an application for Debt Intervention when it is heard in the Tribunal.</p> <p>Section 88F: The Bill should be amended to allow Parliament to approve the Regulations prior to the Minister being provided all powers.</p> <p>Section 88F(5)(c): If a debt intervention measure falls outside of the specific criteria or a different measure is proposed, the National Assembly must give permission and a notice of the intended measure must be published in the Gazette for public comment.</p> <p>Section 130(4)(e): The proposed insertion (the wording) is to be put in a different or separate provision as there is no need for a Tribunal to determine that an order has been made if/ when the order has/was already made.</p> <p>Section 137: Is the reference of Section</p>	

		<p>88F correct?</p> <p>Section 157A: the word “deliberately” should be replaced with the word “intentionally” for the section to be in line with subsection (1) and for legal certainty. This section should also refer to Section 157D.</p> <p>Section 161: The proposed penalties are harsh and not in proportion with the nature of the offences in Section 157A to C. The proportionality of the sentence to the offence should be taken into account. The penalties should therefore be reconsidered.</p>	
8.	Standard Bank	<p>The Bill does not solve over-indebtedness, particularly for the most vulnerable. The concerns are:</p> <ul style="list-style-type: none"> the deterioration in the culture of loan repayment; banks not being able to ensure repayment on loans which means that the depositor’s money is at risk; The decrease in financial inclusion for lower income consumers. <p>There are already debt intervention mechanisms that would provide more sustainable solutions to over-indebtedness. These mechanisms being: debt review, the NCA and NCR addressing reckless lending, the Debt Counselling Rules system (DCRS), insolvency or sequestration and administration orders.</p> <p>Standard Bank requests that new legislation to deal with illegal lending practices not be introduced as there is already legislation for same.</p> <p>Instead, the industry should be tougher on the enforcement of the existing legislation and also reform the existing debt intervention mechanisms.</p>	
9.	National Treasury	<p>Section 88F: This section should be removed as:</p> <ul style="list-style-type: none"> it creates high levels of uncertainty for credit providers in assessing the risk that they will not be repaid therefore increasing the costs to borrowers. It compels credit providers to act as insurers as the concern is not the consumer’s credit risk but an insurable event for the risk pool as a whole. 	

		<p>It may destabilize the retail sector which shows highly exposed to these lower incomes market segments.</p> <p>The Bill may be unconstitutional giving regard to the implied deprivation of rights (especially section 88F).</p> <p>The Bill has too many unknowns with respect to the impact, especially on levels of credit extension, employment, stability and the structure of the debt market.</p> <p>It is not clear what the basis for qualification of debt relief. It is not clear whether the eligible consumer is:</p> <p>one who earns below R7 500, has no realizable assets and accumulated a debt of R50 000 OR</p> <p>an applicant applicable to the above and must show that he or she cannot afford repayments.</p> <p>The recommendations are as follows:</p> <p>It should be illustrated how the Bill will be resourced and funded.</p> <p>That it be clear that the Bill applies to unsecured lending.</p> <p>The principle that the Bill applies “once-only” should be explicitly stated.</p> <p>Additional Minister Regulation Powers should be proposed to set procedural rules and timelines for debt intervention applicants.</p> <p>The Debt review Process can be strengthened to effectively deal with consumers earning below R7 500 as this would be relatively quicker to implement.</p>	
10.	BASA		
11.	DCASA	<p>DCASA submits that the proposed role of the NCR will be in direct conflict with its current role and obligations defined in s12 to 25 of the Act, as in terms of the Amendment Bill the NCR is required to receive and process applications. Further, the skills required by NCR staff to fulfil the proposed role may well require them to be registered as Debt Counsellors; also the NCR will require technology / software, similar to the software used in the Debt Review process.</p> <p>DCASA submits further that the lack of a defined process with timelines and forms will render the proposed process unimplementable. In order to be effective</p>	<p>NCR and NCT resources to be enhanced to enable efficient implementation of debt intervention.</p>

		<p>the process, timelines and forms need to be included in the Bill and not in any proposed subsequent Regulations.</p> <p>DCASA believes that the application process, assessment process and timelines protection of the Consumer should be well defined and embedded in systems</p> <p>DCASA believes that the NCR is not well positioned to provide the service as qualifying consumers reside in the entire South Africa and very often do not have access to the required technology or airtime to apply electronically or by phone. The NCR is currently in one central place and lack of representation will render the application process ineffective.</p> <p>DCASA submits that the current application requirements are unrealistic. The targeted consumers are not in a position to provide proof of income for 6 months, a list of assets or professional tools and furniture.</p> <p>DCASA believes that the proposed exclusion of debt where credit insurance is present is unrealistic as, the consumer usually does not know if credit insurance is included or not, there is no process included to obtain the information from the credit provider, further, qualifying consumers are normally in arrears with payments when they apply and therefore the credit insurance cover would have been cancelled. Finally, the exclusion means that the consumer is obligated to continue with contractual payments which they do not have.</p> <p>DCASA submits that in terms of the Amendment Bill, the NCT has been provided with powers to amend contractual terms. This will in all probability lead to a Constitutional Challenge which must be avoided to ensure implementation.</p> <p>DCASA submits that the proposed annual review over a three year period is unpractical and will lead to no debt intervention assistance received by the qualifying consumer.</p> <p>DCASA does not support the</p>	
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12.	AGBIZ	<p>AGBIZ believes that stricter regulation may inadvertently have the effect of promoting exclusion as credit providers adopt a more conservative approach to offset the increased risk.</p> <p>Farmers therefore often rely on credit throughout the year for their cash flow needs and settle their debt when their produce is harvested.</p> <p>Since farmers don't have fixed and regular incomes, their repayment history is typically less relevant, although not completely irrelevant, than the feasibility and probability that their crop will materialise as predicted since this will affect their ability to repay their credit facility.</p> <p>AGBIZ urges the Committee to seriously reconsider the amendment to s3(g) of the Act as well as the intention in subsection (h) to remove the word 'consensual' in relation to the resolution of disputes. These amendments may tip the balance unduly and prejudice credit providers. Furthermore, it will increase the risk of</p>	

		<p>lending which will leave creditors with no choice but to adopt a more cautious approach to lending as well as raising the costs of obtaining credit to off-set the increased risk. One of the fundamental purposes of the Act is to provide for increased access to responsible credit on an equitable basis. These amendments may in fact counteract these noble goals. AGBIZ submits that the NCR's ability to unilaterally suspend credit agreements are problematic.</p> <p>AGBIZ does not support the amendment seeking to permit a single member of the Tribunal to hear a matter. It submits that the risk of non-consistent application increases when a single member is permitted to hear an application and even if a ruling is over-turned on appeal, the credit provider's inability to enforce the agreement will severely prejudice the credit provider.</p> <p>AGBIZ submits that agribusinesses are typically not involved in micro lending and as such the threshold proposed for debt intervention would likely exclude the majority of credit transactions entered into by its members.</p> <p>AGBIZ submits that if a debt is extinguished in terms of section (4)(c), it will amount to a deprivation of property which may be challenged in terms of section 25(1) of the Constitution.</p>	
13.	CBA	<p>In terms of the amendment to s69 of the Act, CBA submits that provisions of section 69 of the Act are still inoperative. The NCR has not established a "national register" of credit agreements. CBA therefore submits that the proposed amendment to 1A of S69 be placed elsewhere in the NCA, so as to avoid this section also being inoperative.</p> <p>In terms of the amendments to s71A of the Act, the CBA submits that in order to remove a listing, credit bureaux will first need to receive the order contemplated in S88C(2), S88C(3) and S88C(4), therefore a process must be included in the proposed amendments to allow for all orders to be sent by the Tribunal to the NCR within a specified time-frame and</p>	<p>The NCR, NCT and the relevant credit bureau organization to convene a task team to address the credit bureaux workflow for debt intervention.</p>

		<p>then uploaded by the NCR to the Debt Forgiveness System which the credit bureaux will have access to, so that credit the bureaux can comply with the proposed amendments to S71A.</p> <p>The forum would then put in place the systems and processes required, and the NCR would be able to issue binding Guidelines pursuant to these systems and processes.</p> <p>The CBA requests an amendment to S88A (2) to clarify whether the once off application for debt intervention is applicable to both successful and rejected applications.</p> <p>S88B(1)(b)(ii): CBA submits that the NCR should not notify all registered credit bureau, but rather only the approved credit bureaux who are able to list and remove the information pertaining to debt relief on their credit bureaux.</p> <p>S88B (5): The CBA submits that where the NCR rejects an application for debt intervention or the debt intervention applicant does not accept a referral by the NCR or the Tribunal as stipulated in S88D (1) (b), the NCR must notify the approved credit bureaux so that the debt flag or status code relating to debt intervention is removed.</p> <p>It submits further that it is key that every order made by the Tribunal, must be provided to the credit bureaux by the NCR and an automated process, including format of the order and actions taken by credit bureaux subsequent to receiving the orders, will need to be established.</p> <p>In terms of the insertion of Section 88E of the NCA the CBA submits that any order made for rehabilitation of a consumer in debt intervention, must be provided to the credit bureaux and reflected accordingly on the records of the credit bureaux. The retention period for these orders needs to be clarified, as well as the nature of the information to be held/ reflected on the credit bureaux.</p> <p>Finally that a reasonable timeline be agreed upon for credit bureau development to be compliant in meeting</p>	
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		the requirements.	
14.	ADRA	<p>ADRA submits that the Bill is unconstitutional due to the following: The legislative process may not comply with the requirement that Parliament and its committees provide stakeholders with a <i>reasonable opportunity</i> to participate in the legislative process. There was a short notice period as the Bill was published on 24 November 2017 and submissions were invited for 15 January 2018, which was over the festive season. This is in contravention of s59(1) of the Constitution.</p> <p>The Bill, and in particular the provisions relating to debt intervention, infringe upon fundamental Constitutional rights.</p> <p>The Bill infringes the Constitutional rights of both the credit provider and consumer.</p> <p>ADRA further submits that there is a potential unconstitutionality in criminalizing a contravention of Section 126B, further that there would be a proportionate unfairness of the ensuing sanction, as the dispute of whether the debt has prescribed should be adjudicated upon by a court of law.</p> <p>ADRA believes that the Bill fails to achieve the objectives of the National Credit Act ("the Act").</p> <p>ADRA is of the opinion that the Bill carries with it, the unintended consequence occasioned by the foreseeable artificially created insolvency of credit providers and undesirable consequences of steering debt enforcement into legal processes.</p>	<p>Circumscribe factors to be considered by Tribunal to extinguish debt- e.g. whether a consumer has any chances of getting employment in the future, permanent disability, family circumstances, age of the consumer, prescription, voluntary write-offs.</p> <p><i>Audi alteram</i> principle to be observed through negotiation of new payment terms with all credit providers and at Tribunal hearings.</p> <p>Priority of orders – interest rate reductions, restructure, alternatively suspension, and if payment plan does not solve, extinguish portion of debt.</p>