Policy decisions to be made – National Credit Amendment Bill

Main policy decisions

Question	Explanation	Discussion	Decision
1. Clause 14: Should the measure only be available to citizens, or should it be available to all persons who can apply for a debt review? How do we deal with joint estates, household income, joint debt?	The definition of "debt intervention applicant" was developed from the definition of "indigent", which was taken from Municipal documents. This definition limited the assistance to citizens, hence the inclusion of "citizen" in our Bill. Concerns were raised as to the constitutionality of this limitation, as "consumer" in the NCA is not limited to citizens (i.e. non-citizens can enter into credit agreements). Ito section 86, a consumer may apply for debt relief. A concern was also expressed about the measure not providing for joint estates/debt – this is provided for iro debt review.	- Mantashe: Why are we giving rights to non-citizens when they do not give us similar rights in their countries? - Alberts: Also considering that, but the Constitutional concerns must be taken into account - NCT: Refugees, asylum seekers, permit holders, etc. are allowed to work in SA – if we exclude them, it could be unconstitutional - Mantashe: Do not want Bill to be challenged - Alberts: Bill of Rights requires us to not discriminate. Foreigners work here and they contribute to the economy. Joint estates/debt and debt review: - NCR: If joint estate – considered to be one when applying for debt review. So income of both persons are taken into consideration.	- **Agree to not limit measure to citizens** - **Agree: persons with joint estates/debt to do a joint application**
2. Clause 14: Should the measure only be available to persons (who qualify) who are over-indebted?	Concerns were raised about the measure being available to people who are not over-indebted – the Bill speaks to over-indebtedness in its objects, but the measure is available to all who qualify, regardless of whether they can repay their debt. The intention was for the measure to be available to over-indebted consumers who qualify. The information available at that stage indicated that all consumers who earn <R7500 may be over-indebted and only for that reason was the requirement removed. Statistics now show that more than 50% of these consumers are not in arrears. Only 21% of persons earning less than R7500 are more	- Alberts: Interpretation is good. It is about over-indebtedness. That is the criteria. - Mbuyane: Agree. If you can pay, the measure is not applicable. - Williams: Would that not incentivise someone to stop paying (i.e. to become "over-indebted")? - Mantashe: Would this then be available to people who earn more than R7500? (A: No) - Kumkani: When applying for debt intervention process, need to provide evidence why you cannot pay your debt. Even if there are signs that you are over-indebted – affordability assessment criteria's expense norm would show if you are in fact over-indebted. - Mbuyane: If you apply, there is a process – that	- **Agree: Persons who qualify must also be over-indebted in order to participate.**

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	than 3 months in arrears.	process will show what you own, earn etc. We can use "over-indebted" – application will show if you are or not. - Mantashe: Is R7500 the correct amount? - Alberts: Principle is fine. Unintended consequences may happen – we could revisit and see if measures are in place now to determine that a person is really over-indebted. - DDG: Agree with Alberts re criteria – and to ensure there are measures in place. - Kumkani: Assume that if we adopt the principle, it becomes an Act – when implemented, will have to see to compliance by way of regulation and operations. - Alberts: Parliament should co-design that process - CvdM: the process will be the first hindrance to people who want to abuse the system. Also, an offence is created iro anyone who adjusts/manipulates his/her finances in order to qualify. (10 years penalty)	
3. Clause 14: Should the measure be a new process (as is currently in the Bill), or should the debt review system be used to give effect to the measure? 4. Clause 14: If using existing measures, how is access to debt review ensured (costs)?	The Bill to an extent repeated the debt review process in sections 88A to C. The applications would be to the NCR and adjudication by the NCT. However, a number of concerns were raised about whether the NCR would be able to implement the provisions given the large volumes expected. Constitutional concerns were also raised iro the Bill not using existing means as the least restrictive means (NCR v Opperman) - DTI proposed using the current debt review process but with debt intervention officers to be employed by the NCR. DTI envisages almost 300 officers if 1.7 million consumers qualify and the applications are spread over 3 years. The project would start with about 70 officers;	- Alberts: DC does an analysis, see if there is no reckless credit – it falls within the parameters of extinguishing and not restructuring, and then go that route? - Williams: Consumer approaches NCR. NCR's system is the same as the private sector for debt review. They see if the consumer is over-indebted and the process goes from there. - Kumkani: If we use the term "debt review", it may seem as if NCR is trying to close the DCs down. If we coin it as "debt review", Bill may be challenged. If the consumer goes to a DC and cannot be helped there, he/she then goes to NCR for a "debt intervention" process. - CvdM: We can use different name, but use the process in section 86 (debt review) – i.e. the Bill can say the NCR will assist the consumer with debt	- **Agree: We will use the debt review process, but we will call it "debt intervention" and it will be done by the NCR. NCR will see if the consumer can solve. If so – they will assist the consumer as any DC would have. If the consumer**

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	- Comments received referred to a subsidy: Debt Counsellors would claim an amount from the DTI ito a programme to cover the costs of the debt review for qualifying consumers. DTI is however concerned about the risks associated with administering such a programme. This could be done via either appropriation, or a levy – NT would have to consider which is more appropriate as the monies would be allocated by way of the budget process - Outsourcing: DTI also proposed during the last meeting that they could contract specific Debt Counsellors per major area to do the debt reviews for qualifying consumers. It is necessary for the Committee to know what method will be used in case provision must be made in the Bill: - If increasing the NCR's capacity is an option/one of the options, the DTI needs to advise iro amendments necessary to the functions/powers of the NCR as this would have to be included in the Bill. - If the existing debt review process is used, the Act must be amended to bring the intervention measure (suspension/ extinguishing) into section 86 iro consumers who cannot solve - Regardless of how cost of debt review is addressed, the Memo on Objects will have to be amended iro "Financial implications". DTI and NT to assist the committee here.	intervention by following the process contemplated in section 86. - Mantashe: Is the poor person not left out now? They cannot afford debt review - Williams: Those poor will go to the NCR to go through a debt review process, but we call it a different name. - DDG: Could assist to have somewhere in the Bill that the target market is not catered for anywhere else (A: This is in the preamble) <u>How to ensure access?</u> - NCR: Will need to be capacitated. Will need a system. Will need people. Can in the meantime outsource. Will really want to build capacity. - Mantashe: I am not in favour of outsourcing. - DDG: In favour of capacity improvement. Note the input on outsourcing. Outsourcing could however assist in especially rural areas. - Williams: Agree with Mantashe, we do not want outsourcing. With outsourcing the money goes to other people. - Kumkani: Incentives: DTI is not in favour of incentivising DCs to do their work. Might have DCs harassing consumers as they know of the incentive. Let's rather capacitate NCR. Debt Intervention process will be free to applicants.	**cannot solve, the NCR will then approach the NCT for suspension/ extinguishing process.** - **Agree: NCR's functions to be amended if necessary.**
5. Clause 14: Should assets be a criteria to qualify?	How the NCR would verify whether all assets were declared, and how the declared value of assets would be verified is a concern. Comments were made that consumers who earn less than R7500 in any event do not	- CvdM: We do not want assets to be sold to pay debt, but DCs can assist the consumer to use their assets in such a way that they alleviate their over-indebtedness (e.g. buy a cheaper car)	- **Agree: Assets should not be part of the criteria to**

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	have the type of assets that can be sold in execution. Furthermore, a consumer with a gambling problem may have no assets as they were sold to feed the gambling problem, but that consumer may still be paying his/her debts. However, if we remove assets from the criteria, we are moving away from the NIN**A** concept – this could be addressed by specifically including assets in the debt review process/debt intervention process.	- Mbuyane: NCR to monitor. - Mantashe: Align myself with the proposal that assets rather be included in the process and not be criteria. - Alberts: Difficult. Even if we say that the NCR will have to police the applicants, the situation remains difficult. You can maybe pick up assets via credit bureaux but it will still not be everything. Proposal is better – if you have a car/tv, can you downgrade it? Do not know if there is research that indicates whether this group does own assets. - Williams: Assets will be a factor in the process, but not when you apply.	**qualify, but assets must be considered during the debt review/ intervention process to see whether assets can be better managed to alleviate over-indebtedness.**
6. Clause 14: Should the measure be once off?	All stakeholders indicated that systems would be required to implement the Bill. This affects implementation and may require a grace period before the Bill becomes operational. This means that the date of 24 November 2017 (which made the measure once off) will result in the Bill having an impractical date. Furthermore, the cost of creating capacity at the NCR and setting up systems, suggests a need for a longer term targeted intervention. Some comments requested that the cut-off date be removed so that the measure would be available for longer. Others commented that the need is such that people should be able to apply on more than one occasion. Section 88F(2)(c) was intended to allow for a more permanent measure. S88F(2)(c) is severely criticised as delegating Parliament's plenary powers and allowing too broad a discretion to the Minister.	- Alberts: It is a good question. Other income earners have a permanent system. Did not note the comments that asked for a permanent system. In an ideal world, this would be good. The question is – what effect would this have on microloans and banks, and how can it be ameliorated in another way. Have not seen any studies on that. I cannot see where the dangers are – I can imagine it. From a fairness point of view it should be permanent. The whole world is indebted and there are conspiracy theories on the world exploding. Hasn't happened yet. In biblical times, they had a reboot every 7 years – all debt written off after 7 years. If you do not reboot, could have things explode. I do not have an answer. From a fairness point of view, it does make sense. - Mantashe: We would love the process to be continuous. We do not foresee the economy improving. We do not want to come back every year to say we must change the law to accommodate the poor - Williams: If it is a continuous process – system is set up and it then just goes on? If you take the date away because the date is problematic is the fact of being continuous then just because of the date, or	- **Agree: The Bill must provide that it will not be effective immediately. The President will do a promulgation to determine the effective date once the NCR has the necessary systems to implement the measure. The Bill should also contain a clause that determines a closing date for the referral to the NCT to suspend/ extinguish - 24 months (sunset clause – i.e. once off measure). The NCR process (debt intervention**
7. Clause 14: If the measure is to be continuously available, how many times should a consumer be able to	Comments received indicated that there may be a need for consumers to apply more than once. It is possible that a person who got up on his/her feet, got a job and is then subsequently retrenched. However, the		

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apply?	concern then arises how would an applicant be limited to avoid abuse? One solution could be that the fact of a prior application and the outcome of that application be one of the factors that the NCT considers when it considers whether the debt should be extinguished.	because of a benefit to the population? ▪ CvdM: 88F(2)(c) foresees a permanent measure, so it was always accepted that this lack of assistance to a group of consumers had to be addressed more permanently. Now with the thesis of Ms Coetzee, that lack is also identified as being unconstitutional. - Alberts: If we make this permanent, would that not affect the consultations – people may not have commented as they thought it was once off. There should be criteria about the maximum number of times that a person can apply. If we decide this will run to date x – we have the power to open it up and amend at that stage. That decision must however lie with Parliament. - Williams: If we take the date away, because of the systems to be created etc, is it not possible for the department to say – we are ready now and then that can be cut off date? - Kumkani: ▪ When Bill was initially tabled it had two phases: Once off and phase prescribed by the Minister. ▪ DTI came up with process of NCR to deal with continuous process. ▪ Would advise the committee to take the date away, if it is going to result in the Bill being once off. ▪ Taking economy into account, there are many efforts to talk to credit providers, talking about reckless lending – yet it still happens. People in business in a lending space, should ensure that when they give credit, they apply affordability so that only people that qualify receive credit. ▪ Rather make it continuous and take Minister's powers away. We need to address the vulnerable people being victimised. - CvdM: Cannot continue to consult. If the amendments result from the comments received, we need not advertise again – the Committee may, but does not have to. Furthermore, the NCOP will also	**using the debt review process for persons who earns less than R7500) is a long term process.**
8. Clause 14: Should the measure be available retrospectively?	There was a number of concerns about the retrospective nature of the Bill. However, none of the concerns indicated that it would automatically be unconstitutional for the Bill to be retrospective. If regard is had to the thesis of Hermie Coetzee, which opines that the lack of measures to assist these consumers who fall in the "gap" when it comes to natural person insolvency systems is unfair discrimination and thus unconstitutional, the Bill's retrospective nature is explained (rationale). Fabricius J confirmed in Pienaar Brothers v SARS that [par 85] "(i)n my view, a proper approach would be to judge the legality of retrospective amendments on a case-by-case basis, having regard to the various considerations that I have referred to. <u>The Constitution itself certainly does not prohibit retrospective legislation in civil law</u>". The considerations referred to are that the law should clearly state if it is operating retrospectively and constitutional validity is judged by applying 1. the "rationality" test (however [par 99] "It is not for a Court to say what a good "reason" is" and 2. "reasonableness" or "proportionality" - "reasonable and justifiable in an open and democratic society".		- **Agree: Retrospective (copy item 4 of schedule 3 of NCA)** Item 4 of Schedule 3 to the NCA be incorporated into the Bill with the necessary amendments: "1. Application of National Credit Amendment Act, 2018 to pre-existing agreements (1) The National Credit Amendment Act, 2018 applies to a credit agreement that was made before the commencement date of the National Credit Amendment Act, 2018, if that credit agreement falls within the application of this Act in terms of

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		follow an extensive consultation process – tagged as section 76. The concerns with section 88F(2)(c) is that the powers are too broad and is delegating plenary powers, so comments indicate that this should rather be for Parliament. The Bill does not have to be effective immediately – We can put in a clause that says suspension/extinguishing is 24 months (sunset clause). Recommend that the NCR process remains permanent	Chapter 1 if this Act."
9. Clause 14: Should the role of credit providers be implied, or explicit?	The lack of clear provisions on the role of credit providers was raised in many submissions and opinions on constitutionality. That credit providers play a role in the process was never denied by the Committee, but that role was not explicitly stated. If the debt review process is used, much of the role of the credit provider is already made clear. It would only be iro decisions of the NCT that the role would still be problematic.	- CvdM: Existing measures make provision. NCT processes to be clear that there is a role. E.g. Written submission when considering suspension, extension of suspension or extinguishing the debt. And then there is an appeal process available.	- **Agree: the role to be clearly spelled out iro NCR, NCT processes**
10. Clause 14: Should a single NCT member be able to consider suspension/ extinguishing?	Concerns were raised about the suitability of a single member to consider debt intervention measures as not all are legally trained.	- NCT: Members are already sitting as single members. There is an appeal safety net. The fact that a member is not qualified legally is not a good argument. The members are operating in accordance with a statute, not common law. If there is a concern about bias, add criteria to the bill that the member must consider when adjudicating. Can even say codes of good practice should be developed. Already considering judgments where the Act is not clear. - Alberts: This and the next one (11) – it seems fine if there is a single member with a right to appeal to 3 members. We are not allowed to intervene in the discretion of the single member. Received advice that we could do a phased in approach. Depending on how indebted they are or not, they can write off x% and the rest to be paid off. - Williams: by the time it gets to the NCT, surely the	- **Agree: one member**

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		process up to there is good – it is a recommendation from the NCR. NCR is going to take the process seriously and not just recommend everyone gets their debt extinguished. Appeal process with 3 people is fine. It is not as if the people just walked off the street – there was a process.	
11. Clause 14: Should the NCT's decision be rigid (with steps as the Bill provides at the moment), or in with a discretion? 12. If a discretion, should the reference to "disabled person, a minor heading a household, or a woman heading a household" rather be included here as a group iro whom the NCT must give careful consideration to?	There was a constitutional concern raised here: NCR v Opperman – "This Court indicated in Mohunram that a lack of discretion on the part of a court to forfeit property would result in an arbitrary deprivation of property." The Bill initially included a discretion for the NCT, but there was a concern that allowing this discretion could be seen as arbitrary. NCR v Opperman makes it clear that the discretion is in fact the correct route. If a discretion is allowed, other concerns about a fair balance (proportionality) to be achieved, could be included as criteria to the NCT when making a decision, the factors to include: - Whether the consumer is a disabled person, a minor heading a household, or a woman heading a household, an elderly person; - The role of the consumer in incurring the debt (may have been reckless); - Any fault on the side of the consumer in not being able to solve (e.g. may have resigned from work without any other prospects being available) - The actions of the consumer to obtain work / an income; - Whether the consumer had applied for debt review/ sequestration/ administration in the past and whether any debt has been	- Alberts: We can also advise that in terms of the remedies that they are not bound to extinguish all of the debt – can for example give a sliding scale: under certain circumstances (individual circumstances of the person, other factors) you only write off a percentage of the debt, or even just the interest and costs and not the capital. - Williams: We agree to this discretion. We, however, need to provide guidance to the NCT.	**Agree: The NCT's decision must be discretionary, but the Bill should include guidelines to assist the NCT when applying their discretion**

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	extinguished in the past; - The role of the credit provider in giving the debt (100% in accordance with the Act?) - Any attempts by the credit provider to assist the consumer to solve and the credit provider's cooperation during the process - Etc		
13. Clause 14: Period for which the right of the consumer to apply for credit could be limited (rehabilitation period) What to do iro consumers who defaulted on an order of the NCT? Should the same period apply to a consumer who paid his/her debts without suspension, within one year of suspension, or two years of suspension, whose debt was extinguished, or who was rehabilitated?	There were concerns raised that the Bill is not balanced in that it has possible severe consequences for the credit provider (suspending agreements and extinguishing debt), but very little for the consumer (The NCT may impose up to 36 months mandatory rehabilitation period). The period for automatic rehabilitation on sequestration is 10 years. If the consumer had 5 years' worth of suspension (see below), a further 5 years limit can be benchmarked against sequestration. However, the amounts involved are significantly less than in the case of sequestration which could result in this benchmark being skewed.	- Alberts: It is a difficult question. There must be proportionality. A discretion of the NCT is important. Every person's circumstances differ – although there may be similar circumstances as well. However, we cannot compare this intervention with sequestration. The USA has a quicker turnaround to rehabilitate people. If a person makes a mistake, they should not be punished for a long time. If they've learned their lesson, they actually become better participants in the market. Proportionality: We need the consumer to rehabilitate but we need the credit provider to be protected as well. But it cannot be 10 years in total. There must be a discretion on the commissioner – and there must be guidelines on when this limitation should be applied and for how long it should be given. - Macpherson: I am leaning towards a minimum mandatory rehabilitation period and then we allow the NCT to have a discretion up to a maximum period. I am uncomfortable that the NCT may not give a rehabilitation period. We need a balance to not keep people out of the credit market for too long, but also allowing them enough time to rehabilitate. Referred to Business Day article (2018.03.15) – Do not want to adversely affect the credit market, but also do not want to prohibit the poor from accessing the market. - Mantashe: Whilst I agree that we do not want to exclude people from accessing credit, I propose we keep the rehabilitation period at 2 years.	**No agreement: This question will go to the Committee** **1. Should limiting the right to apply for credit after a debt was extinguished be mandatory or in the discretion of the NCT?** **- Bill: discretionary** **2. What should the period of the limit be?** **- Bill: 36 months**

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		- Alberts: Another idea: If NCT has a discretion – e.g. The Commissioner say, I am only writing off 50% - then the NCT must see if person can pay off the debt in the next 2 years. The right to apply for credit should then be limited for the period of repayment. Maybe give an upper limit e.g. 5 years. It depends on the decision of the NCT and if it would be possible for the person to pay back the remainder in that time. If the NCT sees consumer cannot pay back in 2 years, he may have to write off more debt. - Macpherson: Think that is reasonable. The NCT must consider each case on its own merit. 1st principle is that we must always give a person an opportunity to solve. 2 years maximum is limiting the NCT – helping the consumer with one hand tied behind its back. If an individual wants to repay, but needs more time, then if NCT is limited to 2 years - that is prejudicial to the consumer. Need flexibility for the NCT. Do not want to restrict credit to poor consumers. If we do not give them an opportunity to solve, their future prospects for credit are limited. Need to give NCT a discretion. - Williams: This is about the period for which the consumer's right to apply for credit can be limited: That period is to stop people from applying for more debt after they had their debt written off. This principle is thus in respect of people who had all their debt written off. If 100% is eradicated, then he/she has 2 years before coming back into the market again. The period to pay off the rest not written off is a different situation. - Mantashe: More than 2 years is punitive to consumers. - Macpherson: What could be more punitive to a consumer is having an exclusion period that is seen as too short and too easy. If someone has had 50% or 100% written off and circumstances change and they say we want to pay the money back, but I	

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		cannot do it in 2 years – I want to have a clean record – we need to look at that. 2 years is very short for someone who had R50,000 written off. There needs to be discretion, but we need to say the minimum is 2 years. Should someone with R10,000 and someone with R50,000 debt be treated the same? - Williams: This will go to the Committee	
14. Clause 14: How many times should the suspension be renewed?	Proposals were made for the suspension period to be 5 years, rather than 2 years (i.e. 1 suspension for 1 year, with 4 possible extensions of a year each. However, review of the financial circumstances to be done every 6 months by the person who initially assisted the consumer (this would depend on the question re "how would access to debt review be ensured"). The rationale is to avoid the moral hazard involved in the extinguishing of debt – it would be a short term decision to wait out 2 years (and reasonably possible that a consumer could not secure a new job in this time) in order to get your debt extinguished. (The NCT was also of the view that 2 years is very short for a person to get back on their feet.) However, to wait a longer period and to know that in the end the NCT will consider what you've done to get back on your feet (especially as the consumer would have received financial literacy and budget training in the meantime) makes it less likely that a consumer who can pay, will have his/her debt extinguished – thus limiting moral hazard.	CvdM: The Bill provides for a 12 month suspension period and then a review just before the 12 months are up. Then the suspension can be extended once. Now that we know that the NCR will have debt intervention officers with the skills of debt counsellors that review can be every 6 months and if the circumstances change, the suspension order can be amended. However, if the circumstances do not change what is a reasonable period to allow the consumer to get back on his/her feet? Mantashe: I would propose that it stays at 2 years.	**Agree: The 12 months suspension can be extended once**
15. Clause 14: Should prescription be postponed when the agreement is suspended?	Concerns were raised that prescription is mostly 3 years, so if the credit provider cannot claim during the years when the credit agreement is suspended, this affects the rights of the credit provider to claim the debt	CvdM: This is a situation that will result in unintended legal problems. Propose that prescription stops running when the application is made and that it starts running again at the end of the intervention where the intervention did not end in the whole debt being	**Agree – Prescription to be postponed during the debt intervention**

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	through court procedures. Section (s12) in the Prescription Act could be repeated in the Bill with the necessary amendments: "If a credit agreement is suspended and the period of prescription in respect of that credit agreement would, but for the provisions of this subsection, be completed before or on, or within one year after the day on which the suspension is ended, the period of prescription shall not be completed before a year has elapsed after the day on which the suspension is ended."	extinguished.	**measure**.
16. What does "extinguishing" mean? Currently it means no further claims – all obligations or rights are severed. Is this correct?	Concerns were raised about credit providers who may try to claim the value of the debt by way of unjust enrichment: Need a paragraph to deal with suspension that ends in extinguishing – to make it clear no claim whether in common law or statutory law continues to exist iro that credit agreement or any obligations under it.	CvdM: Need a definition for "extinguish" so that we exclude the concern that the credit provider will simply claim unjustified enrichment once the debt is extinguished. Alberts: Yes. All legal remedies should be neutralised	**Agree – include a definition for extinguish**
17. Clause 14: If the NCT is of the view that a consumer is abusing the measure and decides not to extinguish the debt, what should happen to the consumer?	The NCR/NCT to advise – should the consumer be referred back for a renewed application? Or is the consumer just left in the cold?	- Mantashe: We do not want people to abuse the system. If we say they may try again, for how long do we allow this? But cannot abuse the system. - Williams: Not looking for a job is not a good reason to not grant the measure, given discouraged work-seekers. If it was fraud it would be picked up. Concerned that this is even a question to be considered. If a person is saying they cannot find a job because they live in a small town etc., they should not be excluded. - Macpherson: In a perfect world, there would be no abuse. Only way to stop people from abusing the system is to incentivise against it. I only see one potential abuse, which would be in the application – misleading information. If the NCT/NCR holds a view that there is an abuse in the application, should that	**Abuse would equal fraud and that is dealt with in offences – no amendment required**

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		application be set aside for a period – or does the application start again? We need to guide the NCR/NCT. We need to say to Credit providers that we are taking this seriously. There must a mechanism to guard against this. - CvdM: If accepted that the "abuse" referred to here is fraud, that is covered by offences.	
18. Clause 14: Should section 88F – prescribed measures – be retained?	Concerns that the delegation is too broad (88F(3)(c) and (d) could result in the Minister suspending or extinguishing all the debts in 1 province (DTI opinion)); the broad discretion could amount to delegating plenary powers; the same could be achieved through legislation – legislation can be moved fast if there is urgency; it creates a high level of uncertainty for credit providers which further impacts on this segment; Better measures are available. There were views (the NT and the DTI opinions) that subsections 88F(2)(a) and (b) might pass constitutional muster if the terms used are clearly defined.	- Mantashe: ANC proposes that 88F(2)(c) be removed. - Macpherson: I'm glad that we can agree on (c) and (d) being removed (note: there is no 88F(2)(d)). Definitions for (a) and (b) are still problematic. Suggest that the legislation come to Parliament on a case by case basis. Legislation can be done urgently in Parliament. - Alberts: It would be better to move new legislation when a situation arises. That also gives Parliament oversight. This is a parliamentary Bill. We need to limit the control over it by the Executive. Propose an emergency Bill be moved where Parliament is involved in the legislative process. Then Parliament can ensure the response is in proportion to reality.	**No agreement – the question to be referred to the Committee.**
19. Clause 11: Reckless lending: Should reporting by Credit Providers be retained?	May be self-incriminating; may be anti-competitive; concerns about uncertainty in determining reckless lending; concerns about time (2x as long), cost (2x as costly) and accessibility of information to determine reckless lending (credit providers and debt counsellors) – may have unintended consequences; consumers may be in a worse off position if the NCT finds the agreement was not reckless. The concern extends to the offence of reckless lending – it is simply too unclear when an agreement was in fact reckless.	-Macpherson: Questions 19 and 20 came about by my input. I'm largely happy with the proposal iro 19 and then that we fix the technical issues. I still have a concern on 20. -Williams: Question 19. I am of the view credit providers ("CP") must be made to report reckless lending ("RL"). One of the reasons to do so is that if a consumer goes to a CP and wants to borrow money, the CP must see if they can repay the debt. If the CP picks up any reckless lending in that assessment, they must be obliged to report it. They cannot say that it will cost them too much. The Country is over-indebted because CPs have lent indiscriminately. I think the clause should remain. CPs and DCs should both	**Flagged for further engagement.** **(General view is to retain: to include clear definitions so that obligation is clear and drafters to see how to address the issue of self-incrimination)**

Question	Explanation	Discussion	Decision
		report. CPs say it is taking too long, may be self-incrimination, they should not be reporting on each other etc. This sounds like collusion and the clause should stay. - Macpherson: I was concerned about CPs reporting because of the issue of self-incrimination. - Fubbs: But if I see a crime, surely I am required to report on it? - Macpherson: It must stay if there is no legal concern. - Cachalia: There is no common law requirement that a crime must be reported. We are now taking this further and saying that in financial services, if you see a crime, you must report it? - DDG: We are also concerned about the issue of self-incrimination. But we are also concerned that CPs might report reckless lending frivolously in an anti-competitive manner – our position is that it should be deleted. - NCR (Mashapa): CPs do not have the necessary information to do the determination as they are not allowed to request the information from other CPs. Issues of competition is very important as a CP may use this method to gain an unfair advantage over a competitor. - NCT: Consumers also misrepresent information. A CP does not know what information was given to another CP. At an evidentiary level, it is impossible for a CP to implement this. The sentiment of the Committee is valid, but practically speaking you need evidence and the CP will not be able to produce it. Other CPs will say the information is confidential – when they come to the NCT that type of information is provided during hearings subject to it remaining confidential. - CvdM: If we retain this section we need to consider the issue of self-incrimination: that could be addressed by removing the offence. The proposal is to remove the offence in any event as every CP has its own method to determine affordability. We will further have to	

Question	Explanation	Discussion	Decision
		include clear definitions so that the practical concerns are dealt with. -Fubbs: There are critical factors to address. It seems CPs have a *laisses faire* approach to this. -Williams: This clause will make CPs think twice about entering into reckless agreements because they will have to report each other. To say that it cannot be done in practice and therefore we cannot amend the law, is not correct. The country is over-indebted because reckless lending must have happened on a massive scale. This is one of the cruxes of the Bill – we cannot take it out. -Macpherson: These two clauses are not the solution. They deal with after the fact reporting. We need to look at the affordability criteria – but this Bill is mainly about debt relief. If going broader, I have proposals. I am concerned about the self-incrimination issue – that is the law. We cannot expect CPs to self-incriminate but we can expect DCs to report. -Cachalia: We cannot seek to change the law on self-incrimination here. However, we need to consider the obligation to report and how and to whom this must be done. To report to the courts is not speedy and it opens it up to vexatious litigation. I am torn – I can see the need to limit reckless lending but we need to keep in mind the unintended consequences to the industry, clogging up the NCT, unscrupulous players wishing to delay a competitor. -Fubbs: I am concerned about how to do this and retain fairness required by the Constitution. May need to flag this for further engagement.	
20. Clause 11: Reckless lending: Should reporting by Debt Counsellors be retained? 21. Clause 13: Should	Debt counsellors encountering uncompromising/difficult credit providers if they report suspected reckless lending (ask for punitive cost orders; delay in providing documents); may be anti-competitive; concerns about uncertainty in determining reckless lending; concerns about time (2x as	-Macpherson: The Act says that DCs may report, but they are not forced to report reckless lending ("RL"). Many consumers have gone to a DC and only afterwards did they find out that some agreements were reckless. The DC knew it was reckless but did not check the agreement as it was not in their interest.	**Flag this for further engagement.** **(General view is to retain - to include clear definitions so**

Question	Explanation	Discussion	Decision
Debt Counsellors be required to always check credit agreements for reckless lending, or only if a consumer requests?	long), cost (2x as costly) and accessibility of information to determine reckless lending (credit providers and debt counsellors) – may have unintended consequences; consumers may be in a worse off position if the NCT finds the agreement was not reckless. The concern extends to the offence of reckless lending – it is simply too unclear when an agreement was in fact reckless.	DCs should be compelled to protect their clients. Concern is iro "may" for DCs. They must be forced to report RL on adjudication of applications. -NCR (Mashapa): Debt Counsellors must currently report to the Court, so as to get speedy resolution. -DDG: We can extend the reporting of DCs to the NCR -Kumkani: The provisions iro DCs are aligned to that of the Companies Act, Competition Act etc. where other players, such as verification agencies are required to report fronting when they are verifying BEE activities or auditors are expected to report prohibited conduct. -CvdM: If we retain this section we will have to include clear definitions so that the practical concerns are dealt with.	**that obligation is clear)**
22. Clause 11: Reckless lending: Should suspension by the NCR be retained?	The concern here was that the NCR's role as regulator was being compromised – the NCR is not an adjudicating body and as such should not be suspending agreements prior to an adjudicating body having considered the facts. Furthermore, the consumer is compromised as the referral might not even be at the consumer's request. Yet, further payment would be senseless – however, if the NCT finds that the agreement was not reckless (quite possible given the differing methods of calculation), the consumer is placed a year or more down the line iro that agreement being part of his/her debts.	-CvdM: Concern is about the NCR playing police and judge. There is prejudice to the CP and to the consumer if the agreement is not reckless. Could rather address the delays by way of oversight and ensure that from the NCR and the NCT report on the process, and ensure that the turnaround time is reduced. -Macpherson: Initial concern was the time it would take to declare the credit agreement reckless. It can take very long especially if it goes to the Magistrate's court and throughout that time the consumer is still required to make payments. That cannot be morally correct. It is based on that, that I made the proposal. If a loan is suspected to be reckless then a consumer cannot be expected to pay. Another concern is that interest keeps on accumulating during that period. It must be suspended with no further interest or costs accruing until the order is made. -NCT: There may be a halfway station – the NCR can issue a compliance order. If the CP agrees, the consumer will stop paying and that can be referred to the NCT to make an order. So it will only be when the CP does not agree that it was reckless that the matter	**Further engagement:** **-Allow for a compliance order to be issued by the NCR.** **-Need to find a mechanism to deal with matters that are contested in a speedy way (DTI/NCR/NCT to propose)**

Question	Explanation	Discussion	Decision
		will have to be heard on trial. -Williams: I agree with Macpherson on this clause. If there is a mechanism that allows for speedy resolution, we can accept that but we cannot just remove this clause and hope for a mechanism to be created. -Macpherson: If the NCR has investigated and is of the view that a credit agreement is reckless, why can the NCR not suspend that? (A: an investigator should not adjudicate his own investigation) -CvdM: A compliance notice could already assist. We then need to find a mechanism to deal with matters that are contested in a speedy way. But the NCR cannot be regulator and an adjudicator. -DDG: Agree iro the NCR not being an adjudicator. We need the roles to be clear. We will look at measures to speed adjudication of reckless lending matters up.	
23. New clause: Reckless lending: Should the different interpretations in courts of section 83 be addressed in this Bill?	Courts differ on whether the application is stand alone or part of a debt review only – interpretation challenges.	- CvdM: This is a small technical amendment - Williams: We agree if it is a simple mechanism to do it, fix the technicality – it must be possible for the application to be made to the NCT as well and the same principles as corrected here must apply to the NCT.	**Agree: Clarify Act so that it is clear that the application can be stand alone.** **Make it clear that these matters can be referred to the NCT as well – also as a standalone application**
24. New clause: Reckless lending: Should referrals to the NCR/NCT from Debt Collectors be included in this Bill?	Currently only complaints can go directly to the NCR. Debt Counsellors cannot refer. A number of Debt Counsellors commented that this is the real concern. The NCR and the NCT also indicated that it could assist if the NCR can investigate reckless lending when they suspect it, regardless of a referral/complaint.	- CvdM: This is a small technical amendment - Williams: Agree. Debt Counsellors etc must be able to refer these matters to the NCR. - NCT: The NCR should be allowed to use its monitoring function to establish reasonable suspicion of reckless lending in order to instigate an investigation in this regard.	**Agree: The NCR must be able to accept any reckless lending referral - not just by way of complaints.**

Question	Explanation	Discussion	Decision
25. Clause 17: Credit Life insurance – Should a clause be included to make it clear that this section could come into operation at a later date?	Concerns were raised that if there are no Credit Life Insurance products available, the mandatory nature of this clause will result in consumers not being able to obtain credit in the identified bracket. Including a clause that allows for the section to be operational at a different date from the rest of the Bill could allow the Ministers of Trade and Finance to first confirm that such products are available.	- Fubbs: We should encourage the insurance industry to develop such a product. We want them to be proactive – we can invite them to the Committee - Macpherson: It is a bit concerning that we have not yet contacted the FSB and insurance industry to understand whether this is possible in practice. I believe that it is possible as insurance premiums are based on volume. If there is volume, you will get a product. We need to have a discussion with the industry to confirm what such a product could cost. This clause is aimed at avoiding the need for debt intervention in future. - Fubbs: We have had discussions with the FSB and the insurance industry and this was raised there - Williams: I thought this clause was to be applicable to all credit agreements? - Macpherson: I remember it differently – it would be focused on the targeted transactions - Fubbs: We also want to encourage a savings culture. The focus of the Bill was on the targeted group, but why was this not extended to all agreements? There are such requirements for other products. - Macpherson: It is optional on all products. The rationale was that we wanted to assist the group that qualifies for debt intervention to secure themselves against the insured risks. - Fubbs: All motorists are required to have third party insurance. The concern is of course that a consumer can ask why do I need more than one policy. - CvdM: The limit to > 6 months and <R50,000 was because of the cost. The Committee has indicated that it wanted to speak to the insurance industry iro policies lapsing when a consumer is in arrears. - Fubbs: We need a legal opinion on insurance lapsing	**Agree: Add to commencement clause that this clause will come into operation at a date to be determined by the President – or just a general clause that the different sections of the Bill may come into operation at different times** **-Legal opinion on insurance lapsing**
26. Clause 17: Credit Life insurance – What risks should be	Concerns were raised iro the type of risks to be insured against. No clarity was available from the Bill	- Kumkani: The Credit Life Insurance regulations stipulates that the risks to be insured against are retrenchment, death, incapacity or injured so badly	**Provided for in the regulations – no amendment**

Question	Explanation	Discussion	Decision
insured against?	NT/DTI/NCR to assist	that the consumer cannot work anymore. The risk is that should any of these happen, the consumer cannot pay anymore. This is all currently covered at a capped R4.50 per R1000, payable per month. If the product is innovative, the insurer can add a maximum of R1 per R1000 per month.	**required**
New Criteria: earn <R7500	Summary of NT concern: Should a person qualify if they used to earn more than R7500 but was retrenched and now earn less?	- CvdM: I understood it as when you are retrenched, this would apply to you. As long as your income for the 6 months preceding the application on average did not exceed R7500. So you would have had to be retrenched and without work for at least 6 months. - Williams: The debt intervention is a process. If you earn <R7500 on the day of the application, you qualify. During the evaluation process, the NCR will see if you can in fact pay your debt. - Macpherson: It is a tricky issue. I am getting emails about people wanting to apply. I am concerned about the moral hazard.	**No amendment required**
Criteria: debt R50,000	NT: Is R50,000 before fees and charges or after? We have seen too many cases where even small debt obligations (like R10,000) can become multiples of that - greater than R5,000k - not because of interest charges but because of legal fees etc. Is there a way that the R50,000 threshold could be limited to the original capital amount, but that all related charges can be expunged.	- Agree: It is R50,000 capital amount	**Agree: Make it clear that the R50,000 is only iro capital amount. Interest and costs may cause the debt to exceed R50,000, but the debt would still qualify.**

Other decisions

Question	Explanation	Discussion	Decision
27. New clause: Should definitions for debt intervention"; "prohibited conduct"; "total outstanding balance";	Proposals were made for these definitions to be included, but this would depend on the decisions taken above.	Agree	**Agree: Drafters to determine**

Question	Explanation	Discussion	Decision
"unsecured debt" be included?			
28. Clause 2: Should incidental credit agreements ("ICAs") be included?	Concerns were raised that the Act has limited application to ICAs. Furthermore, the objects of the Bill relate to the promotion of a change in the borrowing and spending habits of an over-indebted society: i.e. "credit-active consumers" in a "debt trap". This is not applicable to incidental credit receivers. Adv Alberts; however, pointed out that once an agreement becomes an incidental credit agreement it remains a debt and must be taken into account when affordability is determined for instance. Incidental credit agreements can furthermore be brought as part of a Debt Review.	- Agree - Macpherson: Concerned about unscrupulous lenders. Can agreements outside the NCA not be included? - Fubbs: If the lender is not registered, the agreement is illegal and not enforceable – so it is already dealt with. We should think more about how to deal with it as the consumers will not name these unscrupulous lenders as the consumers are threatened by them.	**Agree: No amendment required** **(Note: if move the process to part D, delete the clause as part D already applies to incidental agreements)**
29. Clause 3: Should stokvels, trusts and sole proprietors be excluded?	Juristic persons are excluded from applying (even iro debt review). The forms mentioned are all forms of business; however, stokvel is specifically excluded from the definition of juristic person and trust is already included. A sole proprietor is a person who does business in his/her own name and there is seldom a division between their business's finances and their own. DTI to indicate why stokvels were excluded from the definition.	- DDG: We need to look at this – stokvels are groups of individuals coming together as an entity. This takes them outside the scope of a natural person. - NCT: Transactions with stokvels would be at arm's length with their members. - Fubbs: I am not sure that stokvels charge interest? - Kumkani: DTI to look at this matter - Williams: Stokvels should not be included. If they lend money to each other it is done voluntarily. To consider whether they should qualify or not could delay the Bill. If the research shows that they should be included that can rather be done with a subsequent amendment. - NCT: I agree. Stokvels are like a self-bank – so they are more corporate than individual. They are even exempted iro the Banks Act as long as they only lend in their membership - Macpherson: Not sure how stokvels can be included - Fubbs: We did not look at sole proprietors. Should they be excluded? - Williams: I think they should be excluded – how are	**Agree:** **Exclude stokvels specifically** **Sole proprietors not be excluded.** **(note: look at trusts with less than 2 persons – see definition)**

Question	Explanation	Discussion	Decision
		they included? - Kumkani: Agree. They are defined as a business entity. - NCT: A sole proprietor is a natural person running a business. - CvdM: Agree with NCT. They are not juristic persons. Their business' income is their salary. - Agree to include sole proprietors	
30. Clause 12: Should courts— - give the consumer an option to participate in the debt intervention measure? - be able to grant the debt intervention?	National Credit Regulator v Shoprite Investments Ltd: A consumer may not wish to participate in debt review because of the reputational consequences. They have a right not to. A proposal was made that rather than the court referring the matter to the NCR, that the court can make the order as the case is before the court.	- Agree	**Agree: Make it clear that the court can give the same order as the NCT iro debt intervention if the court has sufficient info before it.** **Courts to give the consumer an option on whether to participate or not**
31. Clause 14 – rehabilitation: Should all outstanding debt be repaid? How will the debt be calculated – as from the date of application, or as if suspension/extinguishing never happened? What is the best midway solution?	NCR/NCT to assist	(The discussion at first considered whether a person whose debt is not extinguished must pay the whole debt as up to the date of extinguishing. The Bill allows interest etc. to run while the application is being considered. So if the application is rejected the consumer will have to pay the amount outstanding at the date of rejection. With suspension, the interest etc. is stopped for the period of suspension.) Iro rehabilitation: Should it be the debt as at: - the date of the application? - the date of the order? - as if the debt intervention did not happen (i.e. as at the date of rehabilitation) Flagged	**Flagged**

Question	Explanation	Discussion	Decision
		[DTI proposed after the meeting that it could be the debt, interest and costs as at date of the order taken as a lump sum, with a prescribed interest rate then applying to that lump sum up to the date of payment. So, it could be lower than normal interest rates, but still a fair rate so that credit providers are not wholly prejudiced]	
32. Clause 14 - What current financial literacy and budget training is available?	NT to assist	- CvdM: The issue is actually about whether this could be mandatory. The Committee wanted it to be, but was unsure whether there would be products available. - Williams: We can also suspend the operation of this clause so that it only becomes effective once a product is available. - Macpherson: We need to be careful – the Bill is self-defeating if we do not change behaviour. How long would debt intervention applicants be applying before this becomes mandatory? - Fubbs: With the public hearings, BASA indicated that they have some packages developed. I'm sure the NCR can do something similar. - Williams: This training should be for everyone that applies. Not just for those who have their debt extinguished.	- **Agree: Clause to be operational at a different date, or whole Bill can be operational at a later stage once DTI is ready to implement.** - **Agree: Amend Bill so that the training is mandatory for all applicants.**
33. Clause 15 and 16: Should the power to declare credit agreements unlawful in terms of section 89 of the NCA, be reserved for courts	NCT to advise the Committee	- NCT: The NCT is already dealing with unlawfulness – prohibited conduct and conduct required by the Act that was not done (non-compliance). The NCT cannot impose a sentence if unlawful conduct is criminalised, but the NCT already does something iro civil claims that can simply be applied to criminal matters – the NCT issues a certificate iro unlawful conduct and the consumer then takes that certificate to the courts to claim on. The same can happen iro criminal matters.	**Agree: No amendment needed**
34. Clause 23: Offences - Should all the offences be retained, or should	See table on offences and penalties	See comments below	

Question	Explanation	Discussion	Decision
some/all rather be subject to administrative enforcement with administrative sanctions?			
35. Clause 24: Penalties: Are the penalties too harsh?	Justice pointed out that the proposed penalties appear to be very harsh and not in proportion with the nature of the offences set out in sections 157A – C. In comparison, section 33(2) of the Legal Practice Act, 2014, provides that no person other than a legal practitioner may hold himself or herself out as a legal practitioner or make any representation or use any type or description indicating or implying that he or she is a legal practitioner. The penalty for this contravention is a fine or imprisonment for a period not exceeding two years or both - See the table on offences and penalties	See comments below	

Offences and penalties (NCR/NCT to confirm the current penalties)

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
- 157A(1) Submitting false information or intending to mislead the NCR/NCT on an application for debt intervention - 157A(2) Deliberately altering your financial circumstances in order to qualify for debt intervention	New S88 New S88	None – new section	A fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment; and A permanent prohibition on applying for a debt intervention	- Williams: Reduce to 2 years. The permanent prohibition is in order - Macpherson: The applicants will not be people with home loans – how do you give a fine to someone who earns no money? The permanent prohibition should apply to both (A: It does). We need strict penalties and we need to avoid moral hazard. - Fubbs: If a person is a genuine applicant then this will not apply. The fine is for people who are lying. - Williams: Is there a penalty currently if you lie on a

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
				credit application? (A: If there is an intention to prejudice, it is fraud) - Macpherson: I meant what about an honest mistake? - Fubbs: That is addressed by the way the application is formulated – people must be reminded of the importance of telling the truth on the application. - Williams: The application form is the way to deal with this. It can ask explicitly how many jobs you have etc. - NCT: the evidence that has to be presented will show if a person made a mistake or if the person was abusing the system. - **Agree: Retain as offence. Penalty reduced to 2 years**
157B(1) A credit provider who (a) participates in an unlawful credit marketing practice… commits an offence	section 74(2) and (3), 75(1) or section 91 Section 91 (remove – refers to section 90 – included later)	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void.	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	- Williams: We need to start putting pressure on Credit Providers so that they do not give credit indiscriminately. It needs to be a harsh penalty. - Fubbs: Well you can get a criminal record for petty theft. - Williams: Propose that all in 157B(1) be retained as offences with a maximum of 10 years. - Macpherson: We need consistency in fines. It cannot be reduced as was done with African Bank. Can it not be a single possible sentence of 10 years/10%? (A: African Bank was an admin fine. Cannot prescribe a minimum sanction – courts must have a discretion to take personal circumstances into account. Constitutionality concern – may not prescribe minimum sentences). - Fubbs: If you are found guilty of petty theft, you have a criminal record and you cannot even apply for a job with government. That is very harsh for
157B(1) A credit provider who (b) does not comply with the limitations to entering into a credit agreement at a private dwelling … commits an offence;	section 75(2)	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void;	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	

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
			of its annual turnover or R1 000 000, whichever amount is the greater	an impoverished person. We need to have a balance. We need the punishment to fit the crime. We cannot take the discretion of the courts away. - DDG: Consumers are already in a dire situation. Their punishment should not be so harsh (157A). However, Credit Providers do damage to the market. Their penalties should be harsh. - Macpherson: I am aware that African Bank's fine was administrative, but we need to stop allowing industry to get away with bad behaviour. The only way to stop reckless lending is to affect credit providers' bottom line. - Fubbs: This Bill is not just about debt relief. It is about reversing the culture in South Africa of living on debt. Middle income consumers and up are very indebted because of credit cards. People assume if you have credit available on that card that it is your money. Financial literacy training would help solve that concern. - **Agree: Retain as offences (save for reckless lending), and retain 10 years and 10% penalties.** (Note: With this view of the Committee, should we not try to retain reckless lending as an offence? But how to determine clearly what is reckless lending?)
157B(1) A credit provider who (c) does not comply with the limitations related to visiting or entering into a credit agreement at a person's place of employment … commits an offence	section 75(3)	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void;	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	
157B(1) A credit provider who (d) enter(s) into a reckless credit agreement with a prospective consumer commits an offence	section 81(3) Concern: Determination of reckless lending is very uncertain – **Recommend** that this not be an offence	- section 150 orders of the NCT; - section 83 declaration of reckless credit agreement (may set aside all obligations; suspend agreement; restructure consumer's obligations;	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	
157B(1) A credit provider who (e) enters into an unlawful agreement … commits an offence	section 89(2)	- section 150 orders of the NCT; - the entire credit agreement may be declared unlawful and void.	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	

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
			R1 000 000, whichever amount is the greater	
157B(1) A credit provider who (f) includes an unlawful provision … commits an offence	section 90	- section 150 orders of the NCT; - the relevant contractual provision is unlawful and void; and - the entire credit agreement may be declared unlawful and void.	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	
157B(1) A credit provider who (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… commits an offence	section 106(2)(a), (b) or (c)	- section 150 orders of the NCT;	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	
157B(2) Any person who sells a debt under a credit agreement to which this Act applies and that has been extinguished by prescription … commits an offence.	section 126B(1)(a),	- section 150 orders of the NCT; - debt prescribed	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	- CvdM: Although this would be difficult to prove, the NCR advised that prescribed debt is still being claimed and still being sold. Perhaps if this is an offence Credit Providers will be more careful in calculating prescription and avoid selling/claiming prescribed debt. - Williams: Leave this at 10 years. It is a problem. We need to dis-incentivize this. - Macpherson: Agree - **Agree: Retain as offence and retain 10 years and 10% penalties**.
157B(3)Any person who	section	- section 150	fine or imprisonment not	

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
continues the collection of, or re-activates a debt under a credit agreement … commits an offence.	126B(1)(b)	orders of the NCT; - debt prescribed	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	
S157C – Registration offences	SS 39, 40, 41, 43, 44, 44A, 134A Concern: NCA does not provide for any formal procedure for conciliation or mediation or arbitration – any person who assists a consumer with assistance to resolve a credit dispute may be regarded as an ADR – including attorneys. A clearer definition of an ADR is required There may be unintended consequences iro when a person		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	- CvdM: We can add a defence for the unintended consequences, e.g. that the offence is only applicable to people who give themselves out as a Credit Provider/ADR/etc. - Macpherson: To make this an offence is good, but how do we give recourse to a consumer who was a victim? There is a lack of enforceability from the NCR - Fubbs: It is written off - NCR: At the moment it is not an offence. We can only arrest people for retaining ID cards. - Macpherson: Agree it must be criminalised. - Fubbs: Penalty? - Agree 10 years/10% - **Agree: To remain an offence. 10 years/10% penalty**

Offence	Section that requires compliance	Current "penalty"	Proposed penalty	Decision
	has to register. A natural person may have to register as a credit provider merely because the natural person entered into an isolated single credit agreement. This should only be applicable to credit providers that conduct a credit granting business.			