

## OUTSTANDING MATTERS FOR DISCUSSION AND DECISION IRO NATIONAL CREDIT AMENDMENT BILL

	Clause	Question	CLSO response	Dti response	PC discussion & decision
1	<b>Preamble:</b> “...or to be an <u>economically viable client</u> of a debt counsellor,...”	Is this the correct way to state what the problem is?  NCR: Should the preamble make specific reference to the problems in sequestration, administration and debt review, or just make a general statement?	The insertion of specific instances is because the public raised criticism iro why existing measures are not used. We have removed the references to the specific Acts at the suggestion of Dept. of Justice, so we need to indicate what is not working for these debtors. Ms Sheldon suggested “ <u>for</u> a debt counsellor”	NCR: It should be sufficient that current debt relief measures are inadequate for these consumers.	- Use “for” instead of “of” as proposed (amend)  - Retain the 3 sentences referring to the 3 insolvency methods (no amendment)
	<b>CLSO:</b> Preamble: “...or to be an economically viable client <u>for</u> a debt counsellor,...”				
2	<b>1.</b> Definition of “ ‘ <b>debt intervention applicant</b> ’ – par (b) “...that gross income did on an average for the six months preceding the date of the application for debt intervention <u>not exceed R7500 per month;</u> ”	Given that sections 86A and 87 are long term, will R7500 still be the correct amount in 10 years to come?  NCR: Should an amount be specified at all?	Propose that this amount (and the amount for total unsecured debt of R50,000) be subject to review. However: - We need to consider that section 87A is not long term. - We need to include an amount in the Bill to ensure certainty (a lot of criticism was raised by the public iro the risk created by uncertainty), but it must be reviewable.  The sunset clause must be moved to section 86A(12) (See row 15 below) and this	<b>the dti:</b> The proposal is that the reviewing of amounts from time to time should be considered. For now, it can be R50 000 and R7500 but can be reviewed from time to time, say every 3 years. The Minister can be given the powers to review the amounts from time to time.  An additional clause be added indicating that the amount for the total unsecured debt of R50 000 be reviewable, whether on a yearly basis or within a specific period of time, taking into account the levels of income, inflation and	<b>Flagged issue</b>  - The Minister to prescribe gross income with the concurrence of Parliament // no adjustment by way of regulation  - Proposal CLSO: Amend section 171 so that the Minister may adjust the amount by way of regulation, but the Minister must obtain the NA’s approval iro the amount. Factors can also be given to assist the Minister in determining the new amount.

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			differentiation can thus also be addressed in section 86A(12)	<p>other economic factors. This can also be applicable to the R7500. The reason for this is that it will be so difficult and time consuming to approach Parliament whenever we need to review these figures. I think this sentiment was also shared by some members of the committee. It just needs a drafting element in it to ensure that a review of the amounts is done within a particular period of time.</p> <p>NCR: Amount can be determined by Minister through a Notice in Government Gazette from time to time. It should not be specified in the Act. For example, section can state that consumers with an income determined by Minister by notice in Government Gazette. Both the R7500 income and R50 000 debt limit.</p>	
<p><b>Proposed amendments</b></p> <p><b>CLSO: Clause 1</b> (definition): “...not exceed R7500 per month, <u>or such amount as may be prescribed in terms of section 171(2B)(a);</u>”</p> <p><b>CLSO: Clause 13</b> : S86A(12) “(a) Subsection (6)(e) is <u>only applicable to a debt intervention applicant who—</u></p> <p style="padding-left: 40px;">(i) <u>receives no income, or if he or she, or the joint estate as the case may be, receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did on an average for the six months preceding the date of the application for debt intervention not exceed R7500; and</u></p> <p style="padding-left: 40px;">(ii) <u>has a total unsecured debt owing to credit providers of no more than R50,000.</u>”</p>					

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	<b>CLSO: Clause 29: S171(2B):</b> “(a) The Minister may, by notice in the Gazette and after having considered the following factors, adjust the amount contemplated in section 1 in respect of the maximum gross income of a debt intervention applicant: <ul style="list-style-type: none"> <li>(i) the gross income required by a consumer to be an economically viable client for a debt counsellor as at the time of the proposed adjustment;</li> <li>(ii) the cost associated with an administration and sequestration order as at the time of the proposed adjustment; and</li> <li>(iii)inflation.</li> </ul> (b) The Minister may, by notice in the <i>Gazette</i> , adjust the amount of the total unsecured debt contemplated in section 86A(1), after having considered the effect inflation may have had on that amount. (c) Before the Minister makes the adjustment contemplated in paragraph (a) or (b), the Minister must— <ul style="list-style-type: none"> <li>(i) table the adjusted figure in the National Assembly referred to in section 42(1)(a) of the Constitution, together with the rationale for the adjustment; and</li> <li>(ii) obtain the approval of the National Assembly in respect of that adjusted figure.</li> </ul>				
3	3. S15A(1)(c) “(c) to have his or her debt intervention application be considered for an order contemplated in <u>section 87A</u> ; or”	Drafting technicality  <b>the dti:</b> Should there not be a long term solution? (This question is discussed in row 20)	Need to add possible applications under the prescribed measure in terms of 171(2A)	<b>the dti:</b> Yes, drafting is needed, without pre-empting the decision of the committee on the matter but the committee needs to exhaust this point given that in other jurisdictions debt intervention orders are perpetual as long as the consumer is under stress or over-indebted but it is done under strict requirement.	Effect addition iro S171(2A)  (long term solution discussed in row 20)
	<b>CLSO: Clause 3: S15A(1)(c)</b> “(c) to have his or her debt intervention application be considered for an order contemplated in section 87A <u>or as may be prescribed under section 171(2A)</u> ; or”				
4	9. Section 71A(3A)	Drafting technicality	We need to add an order for rehabilitation to the list here		Effect addition iro rehabilitation

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		Should the period for automatic removal be 14 days or 7 days?	This is a policy decision.	NCR: 14 days rather long. 7 days advisable and is in line with the period for removing paid up judgments and adverse records	7 business days (aligned with Act = 7 days)
	<p><b>CLSO Clause 9.</b> S71A(3A) “(3A) The National Credit Regulator must submit proof of the following decisions or orders, together with the date on which the suspension or limitation ends where relevant, to credit bureaux within two business days of that decision or order being made:</p> <p>(a) A rejection by the National Credit Regulator or Tribunal of an application for debt intervention;</p> <p>(b) an order of suspension made in terms of section 87A(2)(b), as well as any extension of the order;</p> <p>(c) an order limiting the rights of the consumer under section 60 as contemplated in section 87A(8)(a); <u>or</u></p> <p>(d) <u>an order for rehabilitation as contemplated in section 88B(7).</u>”</p> <p><b>CLSO Clause 9.</b> S71A(3B) “(3B) Credit bureaux must remove a listing related to debt intervention within <u>seven</u> days from the date—</p> <p><b>CLSO Consequential amendment</b></p> <p><b>Clause 9.</b> 71A(3C) “(3C) <u>Notwithstanding subsection (3B), credit bureaux must remove a listing related to debt intervention within seven days from receipt of proof of a rehabilitation order contemplated in section 88B(7).</u>”</p> <p>The current subsection (3C) to be changed to read <u>(3D)</u>, and (3D) to read <u>(3E)</u>.</p>				
5	9. Section 71A(3C) “ In the event that a credit provider or consumer disputes the information submitted by the National Credit Regulator in terms of subsection (3B), that credit provider or debt intervention applicant may request <u>the Minister to investigate and confirm</u> the correct information, the process of which request,	The question is whether the Minister is the correct party to refer the matter to?	The reason for this subsection is that the <u>NCR cannot arbitrate this dispute</u> – if it is a credit provider that submits the information and it is disputed, the NCR arbitrates – but now it is the NCR that submits the information. The Minister was chosen for the flexibility that this gives the Department. The Minister can refer to the NCT,	NCT: The Minister’s office may not be a practical approach. The usual manner in which disputed entries is handled is by direct dispute with the credit bureaux and then through the Credit Ombud if unresolved. Should be an independent party that adjudicates. Can possibly provide for a direct application to the NCT in the event of a	- NCT to deal with the dispute (using section 115 as guide)

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	investigation and confirmation may be prescribed.”		outsource, ask his/her legal department, etc.	<p>dispute. Similar to a direct referral to S115 NCA.</p> <p><b>the dti:</b> The Minister can address this, if properly prescribed. The only challenge is when the disputes are many, the Minister will need to outsource this function. Unless another body is established, e.g. a Committee or panel (which can be in the regulations). The Liquor Act has a provision that empowers the Minister to address disputes. Section 32(1) of the Liquor Act of 2003 is a reference.</p> <p>Another view from <b>the dti</b> is that the Minister is not the correct party to refer the matter to, or to investigate or confirm, considering that the Minister is more of a Policy maker. It is proposed that the same appeal or review process be invoked/applied where the Credit provider or the Consumer disputes the information submitted by the NCR in terms of (3B) by giving these powers to the NCT to make such decisions.</p> <p>NCR: A complaint must be lodged with the NCR. If the complainant is not satisfied,</p>	

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				he/she can take the decision of the NCR on review to the Tribunal. The Minister's office would not be the appropriate forum to receive and resolve consumer complaints.	
	<b>CLSO Clause 9: 71A(3C) (3C is now 3D – see row 5)</b> 71A(3C): “(3D) In the event that a credit provider or consumer disputes the information submitted by the National Credit Regulator in terms of subsection (3B), that credit provider or debt intervention applicant may <u>apply to the Tribunal to resolve the disputed information and if the Tribunal is satisfied that information is in error, the Tribunal make any appropriate order to correct the information that gave rise to the dispute.</u> ”				
6	<b>10.</b> Section 82A(2): “(2) A credit provider must, <u>within five business days of receipt</u> of a request and at a fee not exceeding the maximum prescribed fee, provide a debt counsellor with such information as may be required to enable that debt counsellor to consider whether a credit agreement may be a reckless credit agreement.”	Is there a sanction if this is not complied with?	<p>I am of the view that section 151 provides for this: “151. Administrative fines.—(1) The Tribunal may impose an administrative fine in respect of prohibited or required conduct in terms of this Act, or the Consumer Protection Act, 2008.”</p> <p>Requests the NCT to confirm if the new section 82A(2) will constitute “required conduct” for the purpose of section 151(1)?</p> <p>(The same question also applies to S82A(1) which requires DCs to report reckless credit)</p>	<p>In NCT's view – yes. Would constitute prohibited conduct if credit provider/DC does not comply as the definition of Prohibited conduct is very wide now – “<b>prohibited conduct</b>” means an act or omission in contravention of this Act;</p> <p><b>the dti:</b> This has been provided for in the Act and that it constitutes a prohibited conduct. The question could be whether the 5 day period is not too short given the volume of information that credit providers deal with on a daily basis. Consider 7 or 10 business days</p>	<p><b>Flagged issue</b></p> <p>Fine and sentence if the credit provider fails to submit information or submits wrong information to the debt counsellor // Retaining the current situation i.e. an administrative fine will be imposed if the credit provider does not comply</p> <p>(Need to advertise if insert a new sanction)</p> <p>“Such information” - If this is an offence then “such information” should be spelt out, otherwise if an administrative fine, it is something that can be ascertained objectively.  <i>(See regulation 55(1)(a) for a</i> </p>

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		Should it be 5 days or 7 days?			<i>list of documents)</i> <b>5 or 7 days?</b> 7 business days
	<p><b>CLSO: Clause 10: S82A(2) “(2) A credit provider must, <u>within seven business days of receipt</u> of a request and at a fee not exceeding the maximum prescribed fee, provide a debt counsellor with <u>the following information in relation to consumer concerned —</u></b></p> <p>(a) <u>relevant application for credit;</u></p> <p>(b) <u>pre-agreement statement;</u></p> <p>(c) <u>quote;</u></p> <p>(d) <u>credit agreement entered into with consumer;</u></p> <p>(e) <u>documentation in support of steps taken in terms of section 81(2) ;</u></p> <p>(f) <u>record of payments made; and</u></p> <p>(g) <u>documentation in support of any steps taken after default by consumer.</u></p> <p><del>such information as may be required to enable that debt counsellor to consider whether a credit agreement may be a reckless credit agreement.</del></p> <p>...</p> <p>(4) <u>Failure to comply with subsection (2) is an offence.</u></p>				
7	10. Section 82A	This draft does not include a suspension function for the NCR. Is that agreeable to the Committee?	The NCR, NCT and the parliamentary legal adviser considered other regulators and Tribunals, but could not find a precedent where a regulator steps into the arena of adjudication. Furthermore, requiring the NCR to investigate and adjudicate creates a concern iro rule of law and thus affects the constitutionality of the clause. Including such a power may affect the ability of the parliamentary legal adviser to certify the Bill as constitutional.	<p>NCT: The NCR as the Regulator cannot have the suspension function. This function will correctly be placed with the NCT, which will have the function of adjudication on all applications and make appropriate orders which may include suspension,</p> <p>NCR: The suggestion is supported.</p> <p><b>the dti:</b> From the current understanding, the current debt review process has a process of mediation that may</p>	<p>It seems that the dti / NCR / NCT are of the view that they can resolve the delays that the Committee was concerned about.</p> <p>No amendment needed.</p>

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				<p>affect the outcome of the review. NCR to confirm. The mediation process can be used as well. The reason why this is suggested is that the point was to ensure the consumer does not have to wait for too long for remedial relief in the process. For this to occur before the NCT process.</p> <p>It would be advisable that this power be given to the NCT to prevent such constitutional challenge.</p>	
8	<p><b>13. S86A(1)</b> “...has a total unsecured debt owing to credit providers of <u>no more than R50,000.</u>”</p>	<p>Given that sections 86A and 87 are long term, will R50,000 still be the correct amount in 10 years to come?</p>	<p>Propose that this amount be subject to review. However</p> <ul style="list-style-type: none"> <li>- We need to consider that section 87A is however not long term.</li> </ul> <p>The sunset clause must be moved to section 86A(12) (See row 15 below) and this differentiation can thus also be address in section 86A(12)</p>	<p><b>the dti:</b> This must be subject to review either on a yearly basis or after every three years, similar to the provisions relating to the review of interest rates and fees by the NCR in terms of regulation 45 of the NCA.</p> <p>NCR: We suggest that the Minister be given the power to revise this amount by Notice in the Government Gazette.</p>	<p><b>Flagged issue</b></p> <ul style="list-style-type: none"> <li>-The Minister to prescribe gross income with the concurrence of Parliament / no adjustment by way of regulation</li> </ul> <p>Proposal CLSO: Amend section 171 so that the Minister may adjust the amount by way of regulation, but the Minister must obtain the NA’s approval iro the amount. Factors can also be given to assist the Minister in determining the new amount.</p>
<p><b>CLSO: Clause 13:</b> S86A(1): “.....has a total unsecured debt owing to credit providers of no more than R50,000, <u>or such amount as may be prescribed in terms of section 171(2B)(b).</u>”</p> <p><b>CLSO: Clause 13 :</b> S86A(12) “(a) Subsection (6)(e) is <u>only applicable to a debt intervention applicant who—</u></p>					



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	<p><u>(i) receives no income, or if he or she, or the joint estate as the case may be, receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did on an average for the six months preceding the date of the application for debt intervention not exceed R7500; and</u></p> <p><u>(ii) has a total unsecured debt owing to credit providers of no more than R50,000.”</u></p> <p><b>CLSO: Clause 29: S171(2B): “(a) The Minister may, by notice in the Gazette and after having considered the following factors, adjust the amount contemplated in section 1 in respect of the maximum gross income of a debt intervention applicant:</b></p> <p><u>(i) the gross income required by a consumer to be an economically viable client for a debt counsellor as at the time of the proposed adjustment;</u></p> <p><u>(ii) the cost associated with an administration and sequestration order as at the time of the proposed adjustment; and</u></p> <p><u>(iii)inflation.</u></p> <p><b>(b) The Minister may, by notice in the <i>Gazette</i>, adjust the amount of the total unsecured debt contemplated in section 86A(1), after having considered the effect inflation may have had on that amount.</b></p> <p><b>(c) Before the Minister makes the adjustment contemplated in paragraph (a) or (b), the Minister must—</b></p> <p><u>(i) table the adjusted figure in the National Assembly referred to in section 42(1)(a) of the Constitution, together with the rationale for the adjustment; and</u></p> <p><u>(ii) obtain the approval of the National Assembly in respect of that adjusted figure.”</u></p>				
9	<p><b>13.</b> S86A(5): “The National Credit Regulator must, when considering an application contemplated in subsection (1), provide the debt intervention applicant with—</p> <p>(a) <u>counselling</u> on financial literacy and financial capability; and</p> <p>(b) <u>access to</u> training to improve that debt intervention applicant’s</p>	<p>Although provision is made for counselling to be offered, no provision is made for compulsory training. Should training in financial literacy/capability be compulsory at the application stage?</p>	<p>The concern is that if it is made compulsory, what will be the consequence if the debt intervention applicant does not participate? Will the order (whether re-arrangement of obligations, or a suspension under s87A) depend on the completion of that training – and if it is, will that not delay the application significantly?</p>	<p>NCT: Do not recommend that the training be compulsory. Will be too difficult and impractical to enforce.</p> <p><b>the dti:</b> It should be made compulsory. If they do not participate they can be excluded from debt intervention because there would not be a change in behaviour without a</p>	<p><b>Not compulsory at application stage – no amendment</b></p> <p>(Discussion on whether compulsory at extinguishing stage – see row 14 below)</p>

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	financial literacy and financial capability.			<p>developmental approach such as training. Financial literacy should/could be one of the conditions when the debt intervention applicant applies for credit. This will also be in line with the broader long term policy view of introducing financial literacy to all consumers in future, including at primary levels as it has been done in other jurisdictions. It is our view that the financial literacy programme should be more of an aftercare intervention during or after the application has been granted and if that is so, it will not delay the application significantly.</p> <p>NCR: Suggestion supported. NCR should only recommend training opportunities to the applicant.</p>	
<b>10</b>	<p><b>14.</b> S87(1A) “(1A) ... the Tribunal or a member of the Tribunal acting alone ... must conduct a hearing and... may—</p> <p>(a) reject ... ; or</p> <p>(b) make—</p> <p>(i) ... ;</p> <p>(ii) an order rearranging the consumer’s obligations in any manner contemplated in</p>	Does this clause provide for the NCT to lower interest rates and extend the period of repayment?	I was of the view that the debt review assessment provided for the reduction of interest rates, but the NCR confirmed that there was a recent court case in which it was indicated that this is not the case. Extending the period is provided for in section 86(7)(c)(ii)(aa) and section 87(1A)(a)(iii) provides for a	<p>NCT: Providing for the unilateral reduction of interest rates by the Tribunal or court is dangerous. See <i>Nedbank Limited v LR Jones 24343/2015 (Unreported)</i>. It is recommended that the debt review process and orders be consistent with the current sec 86 process – no change in interest unless agreed on by</p>	Agree to this but have to advertise.

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section 86(7)(c)(ii); or (iii) both orders contemplated in subparagraph (i) and (ii).’’		<p>combination of orders. It is thus only the issue of lowering of interest rates that remain.</p> <p>The only concern I have is that if I include it specifically for the NCT, it is specifically excluded for Magistrate Court orders. So even those Magistrates who thought they could do it will now know that they cannot. To include it for both, would mean that the Bill must again be published for comment as this would be something new. I considered a catch all clause, but we cannot escape this consequence of additional publication.</p>	<p>the parties (Sec 86(8) consent orders).</p> <p><b>the dti:</b> In support of the position proposed by the NCR during the last committee meeting. This is also informed by the fact that the process is meant to ease the burden on the consumers and therefore if there is no consideration to lower interest rates where applicable, that might defeat the objectives of this Bill.</p> <p>NCR: The reduction of interest rates and fees was in the original Bill published in November 2017. Debt intervention would not work without the Tribunal having the power to lower interest rates and fees.</p>	
<p><b>CLSO:</b> To provide for Magistrates Courts as well, only 1 amendment – <b>Clause 12: S86:</b></p> <p>“(b) by the deletion after subparagraph (cc) in subsection (7)(c)(ii) of the word “or” and the insertion after that subparagraph of the following subparagraph:</p> <p style="padding-left: 40px;">(ccA) <u>determining the maximum interest, fees or other charges under a credit agreement, which maximum may be zero, for such a period as the Court deems fair and reasonable but not exceeding the period contemplated in section 86A(6)(d); or</u>’’.</p> <p><b>Consequential amendment:</b></p> <p><b>Clause 14: S86(1A)(b):</b> (ii) an order rearranging the consumer’s obligations in any manner contemplated in section 86(7)(c)(ii ), <u>with the necessary changes;</u></p> <p><u>or</u></p> <p>- Section 86(7)(c)(ii) is being amended so that the zero interest rate order can be made by both the court and the NCT. We now just need to add “with the necessary changes” to the reference to this section as it falls in a section that applies to the court only. “with the necessary changes” means it will be</p>				

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	interpreted so that “court” reads “NCT”.				
11	<p><b>15. 87A(3)</b> “When considering the suspension or part suspension of a credit agreement, an alteration or extension of that suspension, or the <u>extinguishing of the whole or a portion of the total unsecured debt</u>, ...”</p> <p>(3)(b)(i): “(i) when entering into each credit agreement that makes up the <u>total unsecured debt</u>,”</p> <p>(5)(c)(ii): “... refer the matter to the Tribunal to consider the extinguishing of the whole or a portion of the <u>total unsecured debt</u>.”</p> <p>(6) closing sentence: “...and subject to subsections (7) and (8), declare the <u>total unsecured debt</u> under the qualifying credit agreements as extinguished.”</p> <p>(7)(a): “(a) may be a percentage of the <u>total unsecured debt</u>,”</p>	Drafting technicality	The definition of “total unsecured debt” now specifically states that the R50,000 qualifying amount only refers to the principal debt. It is not the intention that only the principal debt be extinguished – all costs of credit must be extinguished.	<p><b>the dti:</b> The amount of R50 000 is all inclusive. If it is increased, the amount may be challenged as arbitrary.</p> <p>The understanding was that the total unsecured debt refers to the capital amount including interests due. But drafting can also advise.</p>	Agreed
	<p><b>CLSO: Clause 15:</b> S87A(3): “(3) When considering the suspension or part suspension of a credit agreement, an alteration or extension of that suspension, or the extinguishing of the whole or a portion of the <u>cost of credit contemplated in section 101(1) under a qualifying credit agreement</u>, the Tribunal must</p>				

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	<p>take into account relevant factors, which factors may include:”</p> <p><b>CLSO: Clause 15:</b> S87A(3)(b)(i): “(i) when entering into each <u>qualifying credit agreement</u>,”</p> <p><b>CLSO: Clause 15:</b> S87A(5)(c)(ii): “(ii) still does not have sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)(d), refer the matter to the Tribunal to consider the extinguishing of the whole or a portion of the <u>cost of credit contemplated in section 101(1) under each qualifying credit agreement</u>.”</p> <p><b>CLSO: Clause 15:</b> S87A(6): “The Tribunal may, in addition to its other powers in terms of this Act, after having considered—</p> <p>...,</p> <p>and subject to subsections (7) and (8), declare the <u>cost of credit contemplated in section 101(1) under each</u> qualifying credit agreement as extinguished.”</p> <p><b>CLSO: Clause 15:</b> S87A(7)(a): “(a) may be a percentage of the <u>cost of credit contemplated in section 101(1) under each qualifying credit agreement</u>,”</p>				
12	<p><b>15.</b> S87A(5)(b)(i): “(i) has sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section <u>86A(6)(d)</u>, proceed in accordance with section 86A(8); or”</p>	<p>Technical drafting – incorrect cross reference</p>	<p>The reference should not be to section 86A(8). That deals with voluntary rearrangements where there was no agreement. The correct reference should be to 86A(6)(d), but that would read funny as this would be referred to twice in short succession.</p> <p>The same applies to subparagraph (c)(i)</p>	<p><b>the dti:</b> Drafting to advise.</p>	<p>Agreed</p>
	<p><b>CLSO clause 15.</b> S87A(5)(b)(i): “(i) has sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)(d), <u>make a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87(1A)</u>; or”</p> <p><b>CLSO clause 15.</b> S87A(5)(c)(i): “(i) has sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)(d), <u>make a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87(1A)</u>; or”</p>				

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13	<p>15. 87A(8)(a): “limit the debt intervention applicant’s right to apply for credit contemplated in section 60 for a minimum period of <u>12 / 24 months</u> and the Tribunal may limit said right for such further period as the Tribunal deems fair and reasonable— ”</p> <p>“(9) The total period of limitation on the debt intervention applicant’s right to apply for credit contemplated in subsection (8)(a) may not exceed <u>24 / 36 / 48 / 60 months</u> and when determining an appropriate discretionary period, the following factors must also be considered:”</p>	<p>The committee must still decide whether the mandatory limitation on the right to access credit should be 12 or 24 months.</p> <p>This question must be considered together with subsection (9) – namely if there is also a discretionary period of limitation on the right to access credit, what should the maximum total period of limitation be?</p> <p>A question related to this is that not all credit can be stopped. What about Municipal accounts, or when a child needs school shoes?</p>	<p>The period is a policy decision.</p> <p>Municipal accounts do not fall under this Act, so those will not be affected by an order limiting the right to apply for credit.</p> <p>The issue of essentials, is a policy consideration. The committee is however cautioned that opening the limitation up may lead to an abuse. Already developmental credit is not affected, so applications can be made iro educational costs.</p>	<p>NCT: The current basic principle is that once under debt review one cannot access credit for that period of time while under debt review. The same should apply – for the period that the person’s debts are rearranged they cannot apply for any credit.</p> <p><b>the dti:</b> This should be in line with best practices. Access to credit should be suspended. The policy position should be that the period should not be more than 24 months. The consumer’s financial position might change/improve drastically to the extent that if this period is too long, then this will be unfair to the consumer. It would be advisable to keep the period to 24 months in order to allow the consumers to be able to reintegrate into/participate in the economy. For example, a retrenched consumer who might get new employment within a period of 12 months might be deprived of this right of access to credit, if his or her financial condition has changed.</p>	<p>Committee: Mandatory exclusion – 12 months. But may <b>need to flag still</b>.</p> <p>JL: Need diagrammatical flow of the process.</p>
14	15. 87A(8)(b): “(8)	Subsection (8) refers to	In the published draft we’ve	<b>the dti:</b> The financial literacy	Imposition of a levy for

Clause	Question	CLSO response	Dti response	PC discussion & decision
When granting an order contemplated in subsection (6) the Tribunal must— (b) require the debt intervention applicant to attend a <u>financial literacy or financial capability programme</u> .	subsection (6), which deals with extinguishing of a debt. Should the referral for training not rather happen during the first and if necessary again during the second suspension?	also linked the financial training to the final step of extinguishing. However, as the suspension period is intended to help the debt intervention applicant on his feet again, this is where the training should happen. I in fact presented it like this and then afterwards realised that this is not what the Bill as published, or this draft provides.	or capability programme should be continuously applied whenever the order is granted. This could also ensure that consumers take some form of responsibility during the process.	training. Must be introduced by the Minister of Finance in a money Bill, but reference in this Bill: reference to a levy is not precluded.
<p><b>CLSO: Clause 15</b> S87A(2) “(b) <u>(i) suspend all of the qualifying credit agreements, in part or in full, for 12 months, which period may be extended for one further period of 12 months, taking into account the factors referred to in subsection (3); and</u> <u>(ii) require the debt intervention applicant to attend a financial literacy or financial capability programme.</u>”</p> <p><b>CLSO: CLSO: Consequential amendment:</b>  <b>Clause 15.</b> S87A (8) <u>(Delete par (b))</u> “When granting an order contemplated in subsection (6) the Tribunal must limit the debt intervention applicant’s right to apply for credit contemplated in section 60 for a minimum period of 12 / 24 months and the Tribunal may limit said right for such further period as the Tribunal deems fair and reasonable—  <u>(a)</u> taking into account the factors referred to in subsections (3) and (9); and  <u>(b)</u> subject to the maximum periods referred to in subsection (9).  <b>CLSO: CLSO: Consequential amendment:</b>  <b>Clause 16.</b> S88B(3) “(3) The application for a rehabilitation order must further be supported by such information as the Minister may prescribe, including proof that the debt intervention applicant has—  (a) improved his or her, or their joint, as the case may be, financial circumstances to such an extent that the debt intervention applicant can participate in the credit market; and  (b) successfully completed the programme contemplated in section 87A(2)(b).”</p> <p>Re a levy:</p>				

	Clause	Question	CLSO response	Dti response	PC discussion & decision
	<b>Clause 28 – S171</b> “(bA) must make regulations regarding participation in a financial literacy or financial capability programme <u>and must consult the minister responsible for finance on the funding of such programme;</u> ”				
15	15. 87A(12)	Drafting technicality	If this subsection remains in section 87A, its effect is to stop the process after 24 months, rather than stopping the referrals after 24 months. Delete (12) in clause 15 S87A and amend clause 13 S86A(12)		Effect amendment
	<b>CLSO: Clause 13</b> (par (a) is linked to clause 1 – definition of debt intervention applicant – see rows 2 and 8 above) S86A(12) “(a) Subsection (6)(e) is <u>only applicable to debt intervention applicants who—</u> (i) <u>receives no income, or if he or she, or the joint estate as the case may be, receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did on an average for the six months preceding the date of the application for debt intervention not exceed R7500; and</u> (ii) <u>has a total unsecured debt owing to credit providers of no more than R50,000.</u> (b) <u>Subsection (6)(e) is effective for a period of 24 months from the date on which it becomes operational.</u> (c) <u>The Minister must review the impact of orders given under section 87A and may extend the effective period contemplated in paragraph (b) by notice in the Gazette after consultation with the National Assembly.’’.</u>				
16	15. 87A(12) “(a) This section is effective for a period of <u>24 months</u> from the date on which it becomes operational. (b) The Minister must review the impact of this section and may extend the effective period by notice in the Government Gazette after	Should the sunset period be 24 months?  (Keep in mind that this subsection is moving to clause 13 – see row 15 above)	If we retain the review and possible extension in par (b) it may not be so easy to determine the impact within a period of 24 months – the suspension is for 24 months, so no debt will even have been extinguished by the time the Minister must review the	<b>the dti:</b> Perhaps the period of the review could be aligned to the general three-year period for review of many of the regulations by the Minister. Given that 24 months is the most months suggested, we can suggest 24 months.	Sunset clause moved to referrals  Review after 4 years in case want to extend, Minister must determine the effect of extinguishing on the economy. Would want review to occur before the end of the sunset



	Clause	Question	CLSO response	Dti response	PC discussion & decision
	consultation with the National Assembly.”		impact.  The period is however a policy decision.		clause.  Committee agrees to this.
<b>17</b>	<b>19.</b> S106(1A): “Where the term of a credit agreement exceeds <u>six months and the principal debt does not exceed R50 000</u> , the credit provider must require the consumer to enter into and maintain credit life insurance for the duration of the term of that credit agreement not exceeding, at any time during the life of the credit agreement, the total of the consumer’s outstanding obligations to the credit provider in terms of that credit agreement.”	As this is a long term provision, should the period and amount be fixed?	Suggest we add “or as may be prescribed” by the Minister to the period and the amount.	<b>the dti:</b> If targeting short term credit for low income consumers, then the period and the amount will have to be fixed but where the term of a credit agreement exceeds six months and the principal debt does not exceed R50 000, the credit provider must maintain a credit life insurance for the duration of the terms of the credit agreement. In my view, whether the credit agreement exceeds six months or not, e.g. retail credit agreements of small amounts normally take 24 to 36 months but the underlying principle/policy is that there should be mandatory credit life insurance for the vulnerable consumers to cover them in the event of loss of job, death or incapacity.	Both the 6 months and R50 000 be possible to be prescribed.  Agreed
<b>19</b>	<b>26.</b> S161 “(aA) in the case of a contravention contemplated in section 157A, to— (i) a fine or imprisonment not exceeding two years or to both a fine and such imprisonment; and	A question was raised whether two years is not still too steep. Section 157A relates to providing misleading information or manipulating data for the debt intervention measure.	This is a policy decision	<b>the dti:</b> Initially it was 10 years. Two years is not high. It can work.  Two years is reasonable considering that in some instances such years or months could be suspended on condition that the consumer	Retain as is

	Clause	Question	CLSO response	Dti response	PC discussion & decision
	(ii) a permanent prohibition on applying for debt intervention;	The same question is still present on the other offences created by this Bill (committing certain prohibited actions and failing to register) – the sanction for these are 10 years or a fine.		does not commit a similar offence. A permanent prohibition on applying for debt intervention could be harsh, considering that we are dealing with the most vulnerable group of consumers who on a number of occasions do not read or are unable to read the fine-print or understand it for that matter. On other sanctions in general, 10 years is too harsh, a maximum sanction of 5 years could be reasonable under the circumstances.	
20	<p>29. S171(2A) “(2A) (a) The Minister may prescribe a debt intervention measure to alleviate household debt and to address economic circumstances that—</p> <p>(i) constitutes a significant exogenous shock and which caused widespread job losses; or</p> <p>(ii) were caused by a regional natural disaster or similar emergent and that is of grave public interest, contemplated in section 11(2)(a) and identified by the Minister by notice in the Gazette as such.</p>	Is this too wide a delegation given to the Minister? (Constitutionality)	This is a policy decision.	<p><b>the dti:</b> This provision may be unconstitutional. It poses many challenges. It can be removed.</p> <p>This can be addressed by looking at the Legal opinion and the proposal made by the DG, where he indicated that if a policy position is to have these considered by the NCR on a continuous basis then there is no need for the Minister to prescribe a debt intervention measures.</p>	<p><b>Flagging the matter.</b> Will add the definition from the Disaster Management Act.</p>
CLSO: Clause 29 S171:					

	Clause	Question	CLSO response	Dti response	PC discussion & decision
	<p>(4) For the purpose of this section—  <b>(b)</b> “provincial or national natural disaster” means a disaster contemplated in section 23(5) and (6) respectively of the Disaster Management Act, 2002 (Act No. 57 of 2002) and declared as such in terms of that Act.</p> <p>Consequential amendments to align the clause with the Disaster Management Act:</p> <p>(2A)(a)(ii) were caused by a <del>regional</del> <u>provincial or national</u> natural disaster or similar emergent and that is of grave public interest, contemplated in section 11(2)(a) <del>and identified by the Minister by notice in the Gazette as such;</del></p>				
21	29. S171(2A)(b)(ii): “persons with an income of less than R7500 per month; or”	Drafting technicality	Provision must be made for “joint estates” should the provision remain.		Effect amendment
	<p><b>CLSO: Clause 29</b> S171(2A) (b)(ii) “persons, <u>or a joint estate as the case may be</u>, with an income of less than R7500 per month; or</p> <p>Consequential amendments (must make the categories singular):</p> <p>“(b) A debt intervention measure contemplated in paragraph (a) may only benefit one or more of the following consumers:</p> <p>(i) <u>An</u> indigent persons;</p> <p>(ii) <u>a persons, or a joint estate as the case may be</u>, with an income of less than R7500 per month; or</p> <p>(iii) <u>a persons who is part of a group of people</u> who suffered an unforeseen loss of income in a sector identified by the Minister by notice in the Gazette as being subject to mass retrenchments</p>				
22	29. S171(4) “(4) For the purpose of this section “significant exogenous shock” means an unexpected or unpredictable event affecting the economy of the Republic negatively, and may include events such as strikes or political unrest.”.	Is this definition for the phrase clear enough?	<p>It is because it is so difficult to define this term, “regional natural disaster” and “public interest”, that there is concern about the constitutionality of this prescribed measure.</p> <p>This is a policy decision.</p>	<p><b>the dti:</b> The definition is clear. It is wide enough. It is a generic definition of a significant exogenous shock.</p> <p>Though there might be a slight difference where there are massive retrenchments or natural disasters, unless the same policy proposal that these can also be dealt with by the NCR on a case by case basis where consumers can</p>	Flagged.

	Clause	Question	CLSO response	Dti response	PC discussion & decision
				apply for debt intervention. It can be removed as suggested in row 20 above.	
Matters arising from the study tour					