

OFFICE OF THE SPEAKER

Enq: Adv. B Mdluli
Tel: 013 766 1038



FINAL MANDATE

To : The Chairperson of the National Council of Provinces

Name of the Bill : National Credit Amendment Bill

Number of the Bill : [B30 - 2018]

Date of Deliberation : 15 February 2019

Vote of the Legislature :

The Portfolio Committee on Premier's Office; Finance; Economic Development and Tourism (the Committee), confers on the permanent delegate representing the province of Mpumalanga in the National Council of Provinces, a mandate to vote in favour of the Bill.

HON VS SIWELA, MPL
SPEAKER: MPUMALANGA
PROVINCIAL LEGISLATURE

DATE

COMMITTEE REPORT OF THE PORTFOLIO COMMITTEE ON PREMIER'S OFFICE; FINANCE; ECONOMIC DEVELOPMENT AND TOURISM ON THE NATIONAL CREDIT AMENDMENT BILL [B30 - 2018]

1. INTRODUCTION

The Speaker referred the National Credit Amendment Bill [B30 - 2018], (the Bill) to the **Portfolio Committee on Premier's Office; Finance; Economic Development and Tourism** (the Committee) for consideration and report back to the House in accordance with the legal prescripts and the Rules and Orders of the Mpumalanga Provincial Legislature.

In terms of Section 118(1) of the Constitution of the Republic of South Africa, 1996, the Legislature has a mandate to facilitate public involvement in the legislative and other processes of the Legislature and its committees. It is against this background that the Committee conducted public hearings to solicit inputs and views from members of the public on the above-mentioned Bill.

2. OBJECTIVES OF THE BILL

The objectives of the National Credit Amendment Bill [B30 – 2018] are outlined as follows:

- To amend the National Credit Act 34 of 2005, so as to provide for debt intervention;
- To insert new definitions;
- To include the evaluation and referral of debt intervention applications as a function of the National Credit Regulator and to provide for the creation of capacity within the National Credit Regulator and logistical arrangements to execute this function;
- To include the consideration of a referral as a function of the Tribunal;
- To provide for the recordal of information related to debt intervention;
- To require a debt counsellor to investigate whether an agreement is reckless;
- To provide for a court to enquire into and either refer a matter for debt intervention or make an order related to debt intervention;

- To provide for a Magistrate's Court and the Tribunal to determine the maximum interest, fees or other charges when re-arranging debt and for guidance to be prescribed in this regard;
- To provide for an application for debt intervention and the evaluation thereof;
- To provide for the Tribunal to re-arrange a consumer's obligations and make an order in respect of an unlawful credit agreement;
- To provide for orders related to debt intervention and rehabilitation in respect of such an order;
- To provide for mandatory credit life insurance to be prescribed;
- To provide for offences related to debt intervention, prohibited credit practices, selling or collecting prescribed debt and related to failure to register as required by the Act;
- To provide for measures when an offence is committed by a person other than a natural person;
- To provide for penalties in relation to the newly created offences;
- To provide for the Tribunal to change or rescind an order under certain circumstances;
- To require the Minister to make regulations related to a financial literacy programme;
- To provide in a transitional provision for the application of this Amendment Act to credit agreements entered into before its commencement; and
- To provide for matters connected therewith.

3. METHOD OF WORK

(a). The Committee was briefed by the National Council of Provinces (NCOP) permanent delegate, Hon. MT Mhlanga, officials from the National Department of Trade and Industry (DTI), National Credit Regulator (NCR), National Consumer Tribunal (NCT) on 23 October 2018. The Mpumalanga Department of Economic Development and Tourism (DEDT), as well as the Mpumalanga Economic Growth Agency (MEGA) also attended the briefing.

(b). The Public Participation Section conducted Public Education workshops on 14 November 2018 in the three respective districts. The Committee then conducted public hearings after publishing an invitation in the following print media: Mpumalanga News

(covering Ehlanzeni District), The Highveld (covering Nkangala District) and Uthingo (covering Gert Sibande District) in order to solicit inputs / comments from interested and affected stakeholders and members of the public. The Bill was also uploaded on the Mpumalanga Provincial Legislature website. The public hearings were conducted on Friday, 16 November 2018, from 16h00 – 18h00 in the following districts:

DISTRICT	VENUE	NO. OF ATTENDEES
Ehlanzeni	City of Mbombela Local Municipality – Kabokweni Community Hall (Ngodini)	90
Nkangala	eMalahleni Local Municipality – Lynnville Community Hall (eMalahleni)	235
Gert Sibande	Lekwa Local Municipality – Stanwest Community Hall (Standerton)	162

(c). The committee subsequently met on 22 November 2018 to consider the draft report and the negotiating mandate on the Bill and such mandate was duly submitted to the NCOP.

(d). The committee met again via tele-conference on 15 February 2019 to consider the committee report and final mandate on the Bill.

4. INTERACTION BY THE COMMITTEE WITH THE NCOP PERMANENT DELEGATE AND DEPARTMENT OF TRADE AND INDUSTRY

4.1. Hon. MT Mhlanga gave an overview on the Bill and highlighted the background on the Bill as follows:

- The main objective of the Bill is to include the evaluation and referral of debt intervention applications as a function of the National Credit Regulator and to provide for the creation of capacity within the National Credit Regulator and logistical arrangements to execute this function.
- The Bill requires a credit provider and debt counsellor to determine whether an agreement is reckless. It also provides for offences related to debt intervention, prohibited credit practices, reckless lending, selling or collecting prescribed debt and related to failure to register.

- The Bill further provides for measures when an offence is committed by a company and the penalties in relation to the created offences.
- Finally, the Bill requires the Minister of Trade and Industry to prescribe a financial literacy and budgeting skills programme.
- A resolution to consider initiating legislation to pursue debt relief measures for the most vulnerable of consumers was then adopted.

4.2. Briefing by the National Department of Trade and Industry, National Credit Regulator and National Consumer Tribunal

Ms Mokgadi Mathonzi from the National Department of Trade and Industry gave a brief yet detailed presentation of the Bill. The following can be highlighted:

4.2.1 Rationale of the Bill

- The Bill seeks to amend the National Credit Act 34 of 2005.
- Clause 2 inserts the provision of appropriate debt intervention measures into section 3 as one of the methods through which the purpose of the Act is to be achieved.
- The Amendment seeks to create a targeted debt intervention measure for over-indebted consumers who are not able to qualify for, or afford existing debt relief measures and address some deficiencies around reckless lending.
- Providing for possible compulsory credit life insurance (may be prescribed) in certain instances and provide for better enforcement of the Act, including measures to address actions that were rendered unlawful by the Act but which were not criminal so that enforcement was limited to civil actions.
- The Bill also seeks to correct deficiencies in the powers of Magistrate's Court related to debt relief measures.

4.2.2 Proposed Amendments

Clause 4 Amends section 27, which deals with the powers of the Tribunal, to add the adjudication of a "referral" to the powers of the Tribunal (NCR "refers" a debt intervention application).

Clause 5 Amends section 60, which deals with the right to apply for credit, so that it is clear that the right to apply for credit can be limited by the National Credit Act, 2005.

Clauses 17 and 18 Amends sections 89 and 90, which deals with unlawful agreements and provisions, to empower the Tribunal to make an order related to unlawful credit agreements or unlawful provisions of credit agreements.

- The National Credit Act, 2005, currently only provides for the Magistrate’s Court to make an order in this regard.

Clause 20 Amends section 129, which deals with the procedures that are required before debt enforcement may begin, so that—

- the credit provider may also suggest to the consumer to approach the NCR for debt intervention, where applicable; and
- a credit provider may not revive or re-instate an agreement after the execution of an order of the Tribunal enforcing that agreement, or after the obligations under that agreement were extinguished by the Tribunal.

Clause 21 Amends section 130, which deals with debt procedures in court, so that a Magistrate is required to dismiss a matter where the obligations under a credit agreement before it was fully extinguished by the Tribunal.

Clause 22 Amends section 137, which deals with the initiation of applications to the Tribunal, so that the NCR may refer debt intervention applications to the Tribunal.

Clause 23 Amends section 142, which deals with hearings before the Tribunal, to provide that debt intervention applications may be considered by a single member of the Tribunal.

Clause 24 Amends section 152, which deals with the status and enforcement of orders of the Tribunal, so that it is clear that orders of the Tribunal are also binding on consumers and credit providers.

Clause 27 Amends section 164, which deals with civil actions and jurisdiction, to provide for the Tribunal’s jurisdiction to declare an agreement or a provision unlawful.

Clause 28 Amends section 165, which deals with the variation of orders, so that the Tribunal is empowered to rescind orders under certain circumstances.

Clause 30 Amends the long title to include a provision for “debt intervention”.

Clause 29 Amends section 171, which deals with regulations, so that the Minister is empowered to make regulations:

- regarding participation in a financial literacy programme after consultation with the Minister of Finance;
- regarding the determination that a magistrate and tribunal member can make a maximum interest and other charges cap.

- The clause provides guidance on what the Minister must take into account when making these regulations: Existing industry standards; agreed to industry guidelines; must distinguish between secured and unsecured debt; must require the magistrate / tribunal member to apply the reduction of interest / charges incrementally.
 - adjusting the qualifying amounts for a debt intervention applicant, i.e. gross income and total unsecured debt (the Minister is not empowered to adjust these amounts for applications that will be considered for suspension / extinguishing of debt)
 - The Minister is given guidance on what to consider when reviewing these amounts (inflation; cost of natural person insolvency measures).
 - The Minister must review this amount 12 months after the commencement of the Amendment Bill and thereafter every 24 months.
 - The Minister may however only adjust the amounts once per year. When the Minister proposed an adjustment, he / she must consult stakeholders; must table a report in the National Assembly summarising the consultations and providing the proposed adjustment with a rationale for the adjustment. The National Assembly must then approve the proposed adjusted amount.

Clause 31 Provides that the National Credit Amendment Bill applies retrospectively .i.e. it applies to a credit agreement that was made before its commencement date.

- Rationale: consumers are over-indebted under existing credit agreements. If this clause is not inserted, the measure will only be available iro credit obtained after the commencement date, which thus nullifies the intent of the Bill.

Clause 32 Provides the short title and that the Bill will only become operational upon proclamation by the President in the *Gazette*.

- This is to allow the NCR, credit providers, credit bureaux and debt counsellors to update their systems and make provision for the new debt intervention measure. It would also allow the NCR to appoint the necessary staff to administer the measure.

5. INPUT BY THE MPUMALANGA PROVINCIAL LEGISLATURE LEGAL SERVICES SECTION

- The Legal Services Section reported that the Bill is constitutionally sound and in line with Section 76 of the Constitution, that provides a procedure in dealing with Bills affecting provinces.
- The Committee was advised to process the Bill according to Section 118 of the Constitution which deals with public access and involvement in provincial legislatures; and also Rule 201 of the Rules and Orders of the Mpumalanga Provincial Legislature which deals with National Bills affecting provinces.
- Furthermore, the Bill targets low income earning consumers, which should be part of stakeholders to be invited to the public hearings.

6. INPUT BY THE COMMITTEE

The Committee made the following inputs on the Bill:

- The overview and presentation of the Bill was welcomed by the Committee.
- The Committee emphasized the importance of inviting relevant stakeholders to the public hearings and to hold the hearings at a conducive time for all possible stakeholders, including consumers, to be in attendance.
- Information awareness to the public is critical in this process of amending the Act and moreover, the National departments must liaise with and involve the Local Government sphere in that regard.

7. INTERACTION BY THE COMMITTEE WITH STAKEHOLDERS ON THE BILL

The following stakeholders were invited by the Committee to attend the public hearings held on 16 November 2018:

- ❖ Community Members
- ❖ Department of Economic Development and Tourism
- ❖ Mpumalanga Economic Growth Agency (MEGA)
- ❖ National Credit Regulator (NCR)

- ❖ National Consumer Tribunal (NCT)
- ❖ Debt Collectors
- ❖ Debt Counsellors
- ❖ Unregistered creditors (cash loans)
- ❖ Banks / Financial Service Providers
- ❖ Business Organizations
- ❖ Speakers and Executive Mayors of the Local Municipalities in the Districts
- ❖ Ward Committees
- ❖ Community Development Workers

During the public hearings, Members of the Committee as well as the Legal Services Section from the Legislature explained the purpose of the Bill thoroughly in local languages spoken in the three districts. The legislative processes and timeframes for processing the Bill through the relevant channels of the National Council of Provinces (NCOP) were also explained. The public was made to understand their constitutional rights in relation to them making inputs in the processing of Bills by the Legislature.

The Committee also indicated that the closing date for written submissions on the Bill will be Wednesday, 21 November 2018 and also responded to the clarity seeking questions raised after the presentation. The community members and stakeholders who were present at the public hearings unanimously supported the Bill. Most attendees made inputs and also raised concerns which were related to the Bill as follows:

1) Kabokweni Community Hall – City of Mbombela Local Municipality

- a) A concern regarding the cancellation of debt was raised; the credit bureau should be involved to ensure consumers' names are cleared and not blacklisted. Several proposals were made to rectify this concern. Furthermore, it was reported that the credit bureau is still updating consumers information even though the company that indebted them is liquidated.
- b) Members of the public mentioned that the amount of the salary that warrants beneficiation is too low at R7 500.00, more especially if it involves couples / married people's salaries combined.

- c) Other concerns raised by the members of the public included the high interest rates offered by unregistered creditors; consumers end up failing to pay the loan or paying way more than initially planned; unregistered creditors must be regulated.
- d) Concerns of reckless lending by financial service providers as well as lack of household financial literacy were cited as contributing factors to over-indebtedness.
- e) The public moved and seconded the Bill to be passed into an Act.

2) Lynnville Community Hall – eMalahleni Local Municipality

- a) Community members raised a concern on the Municipal billing system error concerning rates and electricity. One of the members of the public's Municipal statement indicates that he owes an amount of R300 000.00 and is unemployed. The member further to that, mentioned indicated that the Premier, Ms RM Mtshweni allegedly made a pronouncement during the "Taking the Legislature to the People" programme in March 2018, that all Municipal debts below R50 000.00 should be written off; however, this pronouncement has not yet been implemented.
- b) A member of the public indicated that the community members of the eMalahleni Local Municipality have no knowledge or understanding of debt counselling and can assist to offer these services / workshops since she has eight years of experience in the field and currently unemployed.
- c) A complaint about some retail Stores was raised: the stores allegedly charge excessive interests and increase the monthly repayment fees without informing consumers prior.
- d) The public moved and seconded the Bill to be passed into an Act. The Bill was supported as presented.

3) Stanwest Community Hall – Lekwa Local Municipality

- a) A member of the public enquired on when the Bill will be implemented. He further sought clarity on what will happen to consumers who earn more than R7 500.00.
- b) Another enquiry was on what will happen if a person gets retrenched and does not have any income anymore.
- c) One member of the public reported that her parents are deceased and has left the family with property rates debts. She enquired on how they can be assisted.

- d) Another community member requested the Bill to address the issue of how those who have attached property to their debts will be assisted.
- e) An enquiry on whether the debts that are written off will re-surface once a person is re-employed was also raised.
- f) Members of the public enquired whether the Bill also deals with debts relating to property rates.
- g) A concern was raised that most people in the local municipality are unemployed and depend mostly on social grants. Further concerns were on the reckless lending by unregistered creditors, especially the elderly who receive old age grants.
- h) A member of the community enquired on what will happen to the debt consolidation agents when the Bill is implemented. The member further wanted to know if consumers are able to take the debt consolidation agents to court when there are disputes.
- i) Members of the public requested that the Bill should be implemented as soon as it is enacted.

8. OBSERVATIONS AND FINDINGS MADE BY THE COMMITTEE

- a) The Committee noted that it has facilitated reasonable public involvement in the Bill and in the main, members of the public were in support of the Bill as presented and agreed for the Bill to be passed into law.
- b) The Bill is consistent with the Constitution, in line with Section 76 that provides the procedure in dealing with Bills affecting provinces.
- c) The public raised a concern on the billing system errors by the respective Municipalities within the districts. Further to that, members of the public mentioned that the Premier, Ms RM Mtshweni allegedly made a pronouncement during the "Taking the Legislature to the People" programme in March 2018, that all Municipal debts below R50 000.00 should be written off; however, this pronouncement has not yet been implemented.
- d) Oral submissions made by the public regarding the Bill were duly considered. Other submissions pertaining to matters beyond the content of the Bill will be referred to and processed by the relevant stakeholders, i.e. through the petitions process of the Legislature and the Office of the Premier.

- e) Members of the public were unanimously in support of the Bill.
- f) The committee considered the outcome of the negotiating mandate as per the report of the Select Committee on Trade and International Relations dated 13 February 2019 and noted that all provinces have voted in favour of the Bill, except for the Western Cape Province.

9. RECOMMENDATIONS

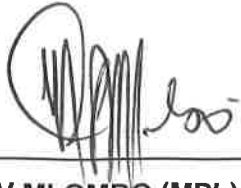
(a). The Portfolio Committee will follow up on the pronouncement made by the Premier, Ms RM Mtshweni, to assess the extent to which the matter of writing off Municipal rates below R50 000.00 will be implemented.

(b). The Portfolio Committee on Premier's Office; Finance; Economic Development and Tourism, after considering the Bill confers on the permanent delegate representing the Province of Mpumalanga in the NCOP, the mandate to vote in favour of the National Credit Amendment Bill [B30 – 2018].

10. CONCLUSION

The Chairperson wishes to thank all members of the public for their worthwhile participation and involvement in the public hearings and for the inputs or comments they have made.

A word of gratitude to the Members of the Portfolio Committee, the NCOP Permanent Delegate Hon. MT Mhlanga, the National Department of Trade and Industry, National Credit Regulator, National Consumer Tribunal, Department of Economic Development and Tourism, Mpumalanga Economic Growth Agency (MEGA), the Executive Mayor and Speaker of the City of Mbombela, eMalahleni and Lekwa Local Municipalities for their efforts in ensuring that the Committee meets its obligation and mandate; as well as the Committee support staff for their support and contribution towards the success of the public hearings and the production of this report.



**HON FV MLOMBO (MPL),
CHAIRPERSON: PORTFOLIO COMMITTEE ON
PREMIER'S OFFICE; FINANCE;
ECONOMIC DEVELOPMENT AND TOURISM**

19.02.2019
DATE