



Philippa Jean Davis NCRDC 916 – NCR Debt Counsellor

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Debt Counsellor

OUR PRIMARY PURPOSE IS TO HELP PEOPLE

Our written comment as follows;

Section 1

The NCA is due an overhaul in terms of what debt may and may not be included and clarity in terms of what relief was intended by the Act from the outset.

It is an insanity to address indebtedness only in terms of credit agreements to the exclusion of what by definition could be construed as incidental debt incurred in water and electricity arrears, rates arrears, SARS arrears and debt that has already passed into the "legal collections" arena such as judgement debt and those debts subjected to Emolument Attachment Orders and "Garnishings" on salaries.

Our feeling is that debt rehabilitation should be a holistic process and all encompassing. By applying a constant methodology to the global debt of a consumer, the relief of the burden of debt is holistic and the rehabilitation a more complete process.

It is therefore our belief that all monies owed by a person, no matter to whom or how incurred, should and must be included in the application of the consumer for debt relief and must be considered by each creditor on merit.

We therefore support the amendment to Section 1 of the Act

Section 86 (7)

This proposed amendment has merit but again the wording of the amendment needs to be made totally unambiguous which has been the downfall of the current Act specifically where credit providers and debt counsellors alike have manipulated those ambiguities to cloud the relief intended and the processes of granting relief so as to make a simple process as complex and as costly as possible. This has undermined consumer confidence that the debt relief programme has any merit and uptake has not been what was anticipated or envisaged by the NCR. As a debt counsellor our research has demonstrated that consumers enter the debt review process way too late in the day, when their debt is all but totally unmanageable and where creditors have already undertaken steps to recover the debt through the courts which then excludes those debts from the debt review and the process becomes self-defeating.

We therefore answer each proposed subsection individually with overall commentary at the end.

"(7) If, as a result of an assessment conducted in terms of subsection (6), a debt counsellor reasonably concludes that --

- (a) *the consumer is not over-indebted, the debt counsellor must reject the application, even if the debt counsellor has concluded that a particular credit agreement was reckless at the time it was entered into;*

The question of reckless credit is a two sided argument; reckless credit lending and reckless credit borrowing. If a consumer can adequately service the debt, the debt cannot be construed as reckless. The debtor is clearly demonstrating an ability to service the debt and knowingly undertook the debt in the first instance. This does not indicate to any sensible debt counsellor that the credit was recklessly granted or recklessly borrowed. The debt is adequately serviced and the debtor has had benefit of the cash (or goods) and can service the commitment.

We therefore support the amendment to Section 86(7)(a) of the Act

- (b) *the consumer is not over-indebted, but is nevertheless experiencing, or likely to experience, difficulty satisfying all the consumer's obligations under credit agreements in a timely manner, the debt counsellor may recommend that the consumer and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement; or*

A voluntary arrangement outside of the courts is always preferable to the protraction and cost of a court process however we must caution that the implementation of this in practice is dubious and fraught as it requires the consistent application of methodology and the cooperation of all parties.

We would expand this to mean that individual credit agreements can be informally rearranged to offer relief for a period of time by consent and that this may not extend to ALL of the debt of the consumer. The proposed wording of this amendment would then exclude an over indebted party from a similar "by consent" rearrangement with his creditors outside of the court process.

We therefore recommend the amendment to Section 86(7)(b) of the Act be adjusted to include consumers who are over-indebted in an informal process

- (c) the consumer is over-indebted, the debt counsellor may issue a proposal recommending that the Magistrate's Court make either or both of the following orders--
 - (i) that one or more of the consumer's credit agreements be declared to be reckless credit, if the debt counsellor has concluded that those arrangements appear to be reckless; and
 - (ii) that one or more of the consumer's obligations be re-arranged by--
 - (aa) extending the period of the agreement and reducing the amount of each payment due accordingly;
 - (bb) postponing during a specified period the dates on which payments are due under the agreement;

- (cc) extending the period of the agreement and postponing during a specified period the dates on which payments are due under the agreement; **[or]**
- (dd) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6; or
- (ee) suspending the accrual of interest for a period of up to five years.”.

On (c) The Magistrates Court **must be in the jurisdiction of the debt counsellor.**

Currently jurisdiction is given to the first/first and second respondents in a debt review application to court where the Applicant is the debt counsellor. This is ludicrous given that it is the debt counsellor that is called upon in the Declarator and by Magistrates to give oral evidence if required. Given that there are over 9 million consumers with impaired credit records and in need of debt counselling and only 700 or so practicing debt counsellors, ground reach to meet the needs of these consumers is severely restricted. Debt counsellors are further restricted in the inability to be in several courts on the same day and to meet the court's robust requirements of them in each jurisdiction and with varying requirements for filing papers and process.

By bringing the matter to the jurisdiction of the debt counsellor, specialist debt review nodes will develop throughout South Africa bringing consistency to the manner in which matters are presented, argued and granted. There is also no prejudice to any one party in this process.

This in turn will expedite matters through the courts which further reduces costs associated with the court application obligation of the debt counsellor, which cost the consumer must bear.

We cannot stress the importance of Jurisdiction which must be addressed and Parliament must consider this in their deliberations.

We therefore recommend the amendment to Section 86(7)(c) of the Act be adjusted to give jurisdiction to the Debt Counsellor

On (c) (i) we have no additions or comment as this is right to identify reckless credit to the court and the methodology well defined elsewhere in the Act

On (c) (ii) we feel extension of term, granting of moratorium on debt for a reasonable period, and reduction and suspension of interest are imperative if the objective of the Act is in fact the rehabilitation of the debtor back into a healthy credit market. Interest charged currently under debt review arrangements is punitive and self-defeating and poorly regulated. Certificates of Balance include the full cost of credit balance, the contractual sum, and then an additional interest rate is applied to the debt. The proposed amendment makes the proposal by debt counsellors unambiguous in the prayer to the Court and the enforcement of the order equally unambiguous to the credit provider.

The proposed amendments make the disclosure of actual indebtedness far more transparent and the proposal to suspend accrued interest stops the abuses of the current process. It also makes the implementation of 103(5) far simpler to define and calculate and enables debt counsellors to include the 103(5) (im duplum) calculation into the amortised and cascaded proposal plans presented to credit providers for consideration.

We therefore support the amendment to Section 86(7)(c)(i) and(ii) of the Act

Thank you for allowing us the opportunity to make this written submission to you.

Please do not hesitate to contact us should you need further insight to our thinking or further particulars in regard to anything we have submitted to you.

Kindest regards and thanks