Trade and Industry

14 August 2018
Chairperson: Ms J Fubbs (ANC)

Meeting Summary

Documents handed out: *National Credit Amendment Bill: editing changes (awaited)*
The Committee met to deliberate on final details in the National Credit Amendment Bill before instructing the Senior Legal Advisor to prepare the final draft for clause-by-clause deliberations.

The Chairperson addressed the matter of the Employment Creation Fund raised at the previous meeting. It had been alleged in a letter, ostensibly from the Department of Trade and Industry, that funds had not been paid to applicants for the creation of jobs owing to a dispute with National Treasury. She had received a response from the Director-General of the Department of Trade and Industry. The letter tabled at the previous meeting was not an official letter from the Department and had not been signed off by senior management in the Department. It was, therefore, invalid. The Director-General had indicated that the official would be sanctioned. A discussion ensued but the Chairperson made it clear that the Committee would deal with the substance of the letter once work on the current Bills before the Committee had been completed.

The Senior Legal Advisor responsible for drafting the National Credit Amendment Bill had sent it for editing and had arranged for a peer review within Parliamentary Legal Services, both of which were quality steps in the process. The Legal Advisor presented suggested changes to the Committee. Terminology had been corrected, a definition of the Constitution added, and a clause introduced to ensure that charges on credit life agreements could not be reduced as a reduction on insurance charges would invalidate insurance and leave consumers unprotected.

Changes had been made to ensure that Guidelines for Magistrates in the matter of reducing interest and fees would also apply to the National Consumer Tribunal. Additions had been made so that the Bill included criteria that the Minister had to take into account when producing the Guidelines. The Minister was required to review the implementation of the Act every 12 months and to amend the maximum income and maximum unsecured debt, should it be necessary. Parliament would have to approve any proposed changes.

The Committee discussed the review period extensively, ultimately deciding on a review within 12 months of the implementation of the Act and further reviews at 24-month intervals. Following each review, the Minister would report to Parliament, regardless of whether he proposed changes in the maximum income or debt.

The criteria that the Minister had to take into account when developing Guidelines for the reduction of interest and fees by magistrates and the National Consumer Tribunal were closely examined. The Bill referred to the Debt Counsellor Rules System but as that was a privately-owned system, the Committee determined that the reference should be removed, and reference be made to the voluntary agreement amongst credit providers, known as the Task Team Agreement. The principles were identical. The guidelines would ensure that charges were not immediately reduced to zero and that, only once all other possibilities had been explored, could the charges be reduced to zero.

It was noted that, for the first time, the Bill would make it illegal to lend money if one were not a registered credit provider and that the offence carried a ten-year prison sentence as well as a hefty fine. It was an offence not only to lend money, but even to offer to lend money, making it fairly easy to prove the offence in court.

Members raised concerns about the impact on the credit industry, and the economy in general, as well as the impact on poor people should they not be able to raise a loan. It was noted that the credit industry was the very lifeblood of the economy.

The Chairperson of the National Consumer Tribunal reminded the Committee that South Africans who could afford to approach the judicial system could apply to be declared insolvent, but poor people could not afford the costs . What the Bill did for people who were the poorest of the poor would happen extra-judicially, which took away the legal costs and made a type of insolvency accessible to the poor.

The National Credit Regulator raised a concern about the lack of a definition for 'cost of credit', although there was a definition in the principal Act. It was a matter of drafting style and was referred to Legal Services for advice.

National Treasury had some concerns about the Bill. It was particularly concerned about the implementation of the Bill and the readiness of the Department of Trade and Industry, the National Credit Regulator and the National Consumer Council to implement the Bill. As there had been a change in officials representing Treasury, the officials did not have the latest draft of the Bill and some of the concerns raised had been addressed previously. Treasury assured the Committee that it supported the spirit and intent of the Bill. The Chairperson recognised the important role Treasury had to play in the drafting and implementation of the Bill.

Meeting report

The Chairperson noted a scheduled meeting later that week with International Trade Administration Commission of South Africa (ITAC). Adv Mbulelo Ruda from the Parliamentary Legal Services would give a legal opinion on the level of confidentiality required for a meeting with ITAC. The Chairperson would address that matter at a later stage.

Employment Creation Fund

As a matter arising from the previous meeting, the Chairperson addressed the matter of the Employment Creation Fund. Enquiries had been made and the Chairperson had received a response from the Director-General (DG). The Chairperson informed the Committee that she had been suspicious of the official nature of the letter as she had previously encountered a similar case where a letter had been fraudulently distributed from another entity. The latest letter was not an official letter from DTI and had not been signed off by senior management in the Department and was, therefore, invalid. The DG had indicated that the official would be sanctioned. The Committee would further engage on the matter the following day.

Mr D Macpherson (DA) was disappointed that the DG had not responded to the substantive matter in the letter. Although it was unauthorised correspondence, the fact still remained that the Employment Creation Fund had not distributed money to those who had applied for the funding and, therefore, jobs were not being created. It had to be remembered that it was donor money from the European Union (EU). The DG's letter deepened the controversy and did not resolve it in any way. The Department and National Treasury should be required to appear before the Committee so that Members could grill the Department and Treasury in order to understand where the money was and why it was not being allocated. What the Committee did not want in the current economic climate was for the EU and other donors to cut funding to the country because it could not account for where the money was. DTI and Treasury had to be called before the Committee.

The Chairperson noted that she had already indicated that the matter would be dealt with.

Mr B Radebe (ANC) found the DA response to the letter quite troubling as the Committee had spent a lot of time on the matter of the letter when the Committee had work to do on the Bills. The time had been allocated for dealing with the Bill, not with other matters. He was happy that the DG was going to sanction the official. One could not allow officials to create such problems. That information had been in the media, but it was fake news. In future, should any Member wish to table anything, it had to go straight to the Committee Secretary who would send it to DTI before it was raised in the Committee. In that way, any item could be checked before it was presented to the Committee.

The Chairperson indicated that she had made it clear when the matter was first raised that she had queries about the veracity of the letter and had wanted that checked before further action could be taken. Otherwise, the Committee could be dealing with a *lettre de cachet* as in the French Revolution and there had been heads rolling all over the show. The Committee had to ensure from where the letter had come. It could have been sent out by someone who had been frustrated It did not reduce the interest of the Committee in the substance of the matter, but the two had to be separated. Parliament could not countenance such a letter. She believed that Mr Radebe had proposed a progressive way forward. The Chairperson asked the Secretary to clarify the veracity of any such information that came to the Committee, before it was addressed in the Committee.

Mr Macpherson was concerned that other Committee Members did not acknowledge the importance of the substance of the letter.

The Chairperson declared that the matter had been dealt with. The substance had to be dealt with. Mr Macpherson should not respond to something that she had dealt with.

Mr Macpherson responded that the Chairperson and Committee Secretary had had the letter for a week before he had raised the matter in the Committee, but nothing had transpired. Secondly, it was not within the powers of the Chairperson nor the administration to vet anything he wished to table at a Committee meeting. He did not believe that there was any rule allowing that. If the Chairperson believed that there was, he requested a ruling from the National Assembly Table on the matter.

The Secretary asked that it be noted that he had said at a previous meeting that he had not received the letter and that he had communicated that to Mr Macpherson.

The Chairperson indicated that she, too, had not received the email containing the letter. She had had her emails checked by the relevant person in Parliament but there was no such email in her mailbox.

Mr A Williams (ANC) understood what Mr Macpherson was saying about not vetting documents that Members submitted to the Committee, but he felt that the Committee had to be sure that such a letter was valid, as stated by the Chairperson. Members had spent a great deal of time on the matter and Members could not spend time on any document coming from any source and make a big issue of the matter. The Chairperson was not trying to undermine the democratic rights of any Member, but there was a need to ensure the validity of information presented to the Committee. If a document was from the Department of Trade and Industry, that had to be the real source. Any information acted on by the Committee should have a legitimate source.

The Chairperson agreed with Mr Williams. She knew that Members would agree on the point made but the Committee had to ensure the validity of correspondence. The Committee had to distinguish between the source of the letter and the substance of the letter. Invalid documents had to be rejected but the Committee had a duty to exercise oversight and, as she had indicated, she had factored in the substance.

The Chairperson welcomed delegates from the DTI, especially Deputy Director-General: Consumer and Corporate Regulation Division, Dr Evelyn Masotja, the NCR CEO, Ms Nomsa Motshegare, and the Chairperson of the National Consumer Tribunal, Prof Joseph Maseko.

'Debt Intervention' National Credit Amendment Bill - editing changes
Adv Charmaine van der Merwe, Senior Legal Advisor, had sent the National Credit Amendment Bill for editing by the Bills Office and had arranged for a peer review within Legal Services, both of which were quality steps in the process which took time, so it was important for the processes to commence. The editing office had requested proofs as, she suspected, the editors preferred to edit on Creda Print proofs. Adv van der Merwe would address suggested changes but she was not going to deal with basic grammatical detail. She had a document available for any Member who would like to undertake a detailed review of the edits.

Preamble
The Preamble spoke of debt intervention measures in the current processes. However, the Bill would create debt intervention measures. By suggesting that debt intervention measures already existed, would create confusion. Hanlie Coetzee, a legal expert, had used the term 'existing natural persons solvency measures'. Adv van der Merwe, therefore, suggested that 'debt interventions measures' in the preamble to the Bill be replaced by the words 'existing natural persons solvency measures'.

Clause 1
A definition of the Constitution had been added because the Bill referred to the Constitution.

Clause 12
Section 86 subsection 7 dealt with the type of orders that the magistrates court could make, and, with the Amendment Bill, the National Consumer Tribunal could also make. She had added, with subsection (ccA) that the magistrate or the Tribunal could determine "the maximum interest, fees or other charges contemplated in section 101(1)(e) under a credit agreement". Section 101(1)(e) dealt with credit life insurance. One comment made by the Committee was that credit life insurance was not to be reduced to zero interest rate as the consumer would then lose that insurance. Inserting that prohibition in the Bill meant that it became a substantive matter and not just guidance.

Clause 29
Section 171 dealt with guidance to magistrates and the Tribunal. Line 26 dealt with the financial literacy programme while line 29 Clause 29(a)(bB)(i) required the Minister to make regulations to provide guidance to the Magistrate's Court and the Tribunal. Originally the Bill only allowed for the Magistrate's Court to make the order to reduce interest, fees and other charges but the Bill had been amended to allow the Tribunal to make the same order and therefore the guidance provided by the Minister had to be applicable to the Tribunal as well.

When the magistrate or the Tribunal reduced charges, that constituted deprivation, so the Bill had to give the Minister guidance by looking at the public submissions. There were questions about the issue of excluding luxury items as proposed by submissions but there were currently guidelines for the sheriff as how those matters were handled. Also, there were already industry guidelines. Adv van der Merwe had removed vague conditions or those that the Committee had not agreed with. The Minister had to take into account: subsection (ii)(aa) existing industry standards and practices; (ii)(bb) reflect on the existing Debt Counsellor Rules System; (ii)(cc) consider incremental and proportional reduction of charges. The Debt Counsellor Rule System envisaged a stepped reduction to zero rating, but the guidelines but the system was voluntary, so the Minister could adjust the system where necessary.

Clause 29 (b) required the Minister to, in respect of longer term measures, increase the maximum income and maximum unsecured debt. The Committee had discussed the frequency of reviewing the amounts. DTI had expressed concern about 12 months and had suggested once every three years. The Minister had to report to Parliament after every review. The wording indicated that the Minister had to review every 12 months but was not obliged to make changes to the amounts. However, he had to report to Parliament following the review. The first review had to take place within 12 months of the implementation of the Act and the amounts had to be reviewed every 12 months thereafter, followed by a report to Parliament. Adv van der Merwe explained that the Committee could change the period of time if Members thought that the task of reviewing every 12 months would be too onerous.

Committee comments on changes
Clause 29
The Chairperson expressed concern about the use of 'may' and 'must' and 'in consultation' in Clause 29. It sounded as if the Minister was not obliged to undertake a review. She noted that it might be too onerous to deploy resources every 12 months,

but questioned whether the Minister should be left to his own devices. She noted that DTI had suggested a timeframe of three years. Possibly the Bill could say ‘may’ review every 12 months but ‘must’ do so every three years. It was important to remember the intention of Committee Members.

Mr Williams understood the clause to say that the Minister ‘must’ review every 12 months but he ‘may’ change the numbers. That was where the ‘may’ came in. The question then was whether or not the 12 months should change. If it were changed to three years, he was concerned that many years could go by without a change in the maximum level of income or unsecured debt and the inflation rate could have wreaked havoc with the figures. If the 12-month period was changed, there should be no ‘may’ and only ‘must’. If the Minister was not forced to make changes, it could be 12 years before anything was changed.

Mr Macpherson stated that the use of ‘may’ and ‘must’ in that clause was correct. He understood that if the Minister chose to change the figures, he could so, but if he found that there was no need to make a change, then he did not need to do so. As he understood it, that if the Minister chose to change the figures, then part (c) became a ‘must’, i.e. that he had to take the matter to the National Assembly. He was happy with the wording.

Mr Radebe understood the DTI’s concern about the workload, but he suggested that he would be comfortable if the Minister “must” review every 24 months. Economic conditions changed. He used the example of the Rand-Dollar rate of R15.00 to the dollar that week. The country had been looking forward to a reduction in petrol prices in September but if the exchange rate remained so unfavourable, that would not happen. A period of 24-months was better because there had to be a review during every term of Parliament. He believed that DTI should monitor the situation at least twice in a term of office as the Bill was dealing with the most vulnerable people.

Ms P Mantashe (ANC) supported Mr Radebe’s position that the Minister had to review every 24 months so that the matter went to the National Assembly twice in a term.

The Chairperson asked the DDG to respond to the suggestions.

DTI comments on changes
Dr Evelyn Masotja, DTI Deputy Director-General: Consumer and Corporate Regulation Division, agreed that the situation had to be monitored. She stated that to say the Minister ‘may’ monitor every 12 months was fine but that he “must” review every 24 months was an acceptable position for the Department. DTI had recommended every three years, but 24 months would give sufficient time for a study of the market, etc.

The Chairperson asked Mr Radebe if he was referring to Clause 29(c) on page 19 of the Bill.

Mr Radebe confirmed that he was.

Mr Williams asked for confirmation of his understanding: except for (c), the clauses that said “may” should remain the same and where it said “must”, that would remain. He supported that position

The DDG agreed with Mr Williams’ understanding.

The Chairperson asked if the DA had any comments on the discussion.

Mr Macpherson stated that the problem was that when one said that the Minister “must review”. Be it 12 months or 24 months, there would be a review, even if there was no need. Even if the Minister thought that there was no need to do so, his hand would be forced. He believed that “may” would be better as the Minister would not be forced to act. The Bill should not force a change when there was no need for change. It would cause unnecessary problems. The DA would support the use of the word “may” in relation to the review. If the Minister needed to act, then he would do so. He agreed that if the Minister decided to proceed, then he had to be compelled to report to Parliament.

The Chairperson stated that the only change the Committee was actually looking at was the change from 12 months to 24 months.

Mr Williams stated that the Minister was not being compelled to make changes. What he was being forced to do, was to review the amounts and then present a report to Parliament. He could decide that there would be no changes after he had reviewed the situation and he would write a report to the House to that effect.

The Chairperson stated that the wording would stay as it was as both parties had agreed to that position, apart from the fact that the ANC had called for 24 months instead of 12 months. The first review would be 12 months after implementation and thereafter, the Minister must report once every 24 months. Should both 12 months become “must”? She asked for clarification.

Mr Williams confirmed that there had to be a review after 12 months and thereafter every 24 months.

Mr Macpherson agreed with the position.

Adv van der Merwe suggested that the Committee would want to look at Clause 29(a)(bB) on page 18 which gave the criteria for what the Minister had to consider when writing the guidelines.

Preamble
The Chairperson noted that she had not allowed Members to comment when Adv van der Merwe was presenting so she would like to work methodically from the beginning. The first point was the change of “debt intervention” on page 2 of the Bill.

Mr Williams noted that change proposed was from “debt intervention” to ‘existing natural persons solvency measures’ as the previous intervention and he approved that the change be made so as to create clarity between the previous measure and the intent of the current intervention. The previous intervention had a different name. It meant that the name of the current intervention remained ‘debt intervention measure’.

Mr Macpherson agreed with the change on behalf of the DA.

Clause 1
The Chairperson turned to the definition on page 3. The definition of 'Constitution' was acceptable to the Committee.

Clause 12
Clause 12 on page 7 line 51 provided an explanation of the powers of the magistrate and Tribunal. Did the Committee agree with the explanation?

Ms Mantashe agreed on behalf of the ANC.

Mr Macpherson explained that he had just seen it and asked if the advocate could clarify.

Adv van der Merwe stated that magistrates and the Tribunal had been unable to reduce interest because it had not been lawful. There had been a court case in which the magistrate had stated that he did not have authority to change interest rates. Thus, The Committee had included in the Bill that magistrates and the Tribunal could reduce charges. However, there was a concern about reducing charges on credit life insurance as the consumer would lose the insurance if those payments were reduced. The suggestion was that the Minister would put it in the guidelines that the impact of the reduction in charges should be considered. However, the credit life insurance charges should not even be assessed as if charges were reduced, the insurance would lapse. She had put it in the primary law that the magistrate and the Tribunal had to exclude the credit life agreement charges from the reduction in charges. The change specifically excluded the magistrate or Tribunal from having the power to reduce charges on credit life insurance.

Mr Macpherson asked if the Minister could still make guidelines saying that interest rate could be reduced to zero.

Ms van der Merwe referred Mr Macpherson to Clause 29 on page 18 which said that the Minister had to make regulations – he did not have a choice - and he had to take into account the existing industry standards and the current Debt Counsellors Rules System, and the magistrate and Tribunal could not start with zero interest but had to decrease incrementally.

Mr Macpherson continued. He was concerned that in line 42 the magistrate and Tribunal would only be required 'to consider' a reduction in interest rates. He could then reduce the rate to zero. Mr Macpherson was concerned about how it would be determined by a magistrate who might choose to not consider that guidance, or if the Minister might choose not to consider it when writing the regulations. Interest was the primary mechanism for a credit provider to make a profit and to continue to fund new consumers. The DA had supported the Minister's cap on interest rates for credit agreements as abuse had been taking place in the market. The Minister had come with a reasonable position. If the Bill eroded interest, the cost of credit would increase to the maximum and result in a reduction in credit availability in the market. The poorest of the poor would be pushed into illegal lending. He was sceptical about the wording.

Mr Macpherson stated that Clause 12 on Page 7, line 51 was just a play on words because one could still determine the maximum interest rate at zero interest. He was concerned that the opportunity for unintended consequences still remained. He asked for that to be alleviated.

Mr Radebe informed the Committee that Parliament had spent good money on the study tour on the matter. The report stated that in the UK, debts were reduced immediately to zero interest rate. The South African legislation expected the magistrate and Tribunal to check reductions before coming to zero. It was not the first option and that was why was there had to be guidance. The ANC agreed with the sub-section on credit life agreement, but zero interest had to be allowed. A study by a debt counsellor stated that 70% of those who had debt were single women who could not make ends meet in their budgets for months and months. The government had to pick them up and put them in the mainstream of the economy. He had said previously that the ANC would never agree with DA on the matter because the ANC was standing up for the poor people. Who was the person who was looking at his capital but not at the poorest on the poor? The ANC would never agree with the DA.

Mr Williams stated that the Committee should not conflate the principles of the Bill with the amendments suggested by the advocate. Mr Macpherson could raise his point when the Committee went through the Bill clause-by-clause. The Committee should focus on the amendments and not discuss principles. The Committee should not jump around.

Ms Mantashe stated that the ANC was a pro-poor organisation and would not protect capital. The ANC agreed with the proposals. The study tour had shown that no unintended consequences had been experienced in other countries when debt relief had been introduced.

The Chairperson noted that the study tour had not gone to Wales, Scotland or Ireland but she recalled a question being asked during the study tour as to whether there had been unintended consequences in Wales, in particular, as people there had been in deep debt. The response had been that there had been expectations of unintended consequences in Wales, but there had not been any. She acknowledged that Wales was not South Africa, but comparative studies were important to examine how similar legislation worked in other countries. The Committee had been provided with information on countries such as Croatia, India and New Zealand by the National Credit Regulator and none of the countries in the comparative studies had experienced unintended consequences. She understood that South Africa had a unique economy, but it was useful to look at how similar countries had dealt with the issue. She wanted Members who went on the study tour to factor it in their responses.

Mr Macpherson believed that it was possible and realistic to be both pro-poor and pro-business. If one were not pro-business, one could not be pro-poor because the very credit that the poor people required would be destroyed. The poor would be pushed towards illegal credit because that would be all that would be available to them. Members had to ensure the viability of the credit providers or Members would push the poor, whom they claimed to represent, to a position where they could not get credit. The DA had said that, for the Bill to succeed, it was important for the supply of credit not to be restricted. Credit would become more expensive or more difficult to get, leading to illegal credit. People had got credit legally and in helping them, the legislation should not destroy the industry that had helped people to get by. People in the country relied on credit. People who were seeking assistance had fallen on hard times, which was why they were seeking assistance or for their obligations to be re-arranged through the National Consumer Tribunal (NCT). However, in that process the Committee should not put at risk the sector on which the country relied. Should the Committee make the availability of credit better? Of course. Should the Committee be reforming debt counselling? Absolutely! The wording in Clause 12(b) on page 7 allowed for a magistrate who believed, on the day, that the most applicable way was to reduce interest to zero.

However, he wished to make the point that once someone had been given a zero percent interest rate, and others had not, then a problem was created. Why did they get it and I did not? Worse still, was the creation of an expectation that consumers should be given a zero percent interest rate. That was the moral hazard. He wanted Members to put aside the colourful language and to think through how the Committee could avoid those scenarios.

The Chairperson noted that Mr Macpherson had raised a number of issues. Members should be clear about which issue they were addressing.

Ms Mantashe believed that the Committee was going backwards and forwards on the same matter. She did not see the colourful language in the Bill. The legislation regulated against unlawful lenders. No unlawful lenders would be allowed to be in business so there was no need to protect the industry. Members were protecting their own people. The Committee was not pushing people to illegal lenders.

Mr Williams accepted the proposals that the advocate had proposed. He believed that the Committee had reached the point where there was a need to vote on contentious issues. The issues had been talked through. He had spent about 6 000 hours on the Bill over the last three years. Generally, the Committee had reached consensus but was now at the point where Members had to vote on points on which Members did not agree.

Mr Radebe put it on record that the legislation did not support the **mashonisa**s (illegal money lenders). Clause 26 was very clear. If a lender was not registered, that lender could go to jail for many years and be fined up to R1 million. The Bill put a chain around the mashonisa. There were no moral hazards reported in any country. He concurred that it was clear that the ANC would never agree with DA. The UK did not even go through reducing interest but went directly to extinguishing interest. The legal advice given to the Committee had suggested that the process was an unduly arduous process. The ANC supported the changes.

The Chairperson asked Adv van der Merwe to reiterate why the mashonisas could not be arrested for money lending but had been arrested for the offence of retaining identity documents.

Stakeholder comments on changes
Prof Joseph Maseko, NCT Chairperson, reminded the Committee that when

comparing South Africa to what other countries were doing on debt intervention, Members had to remember that South Africa was already doing that, for people who could afford it, through insolvency. If someone could not pay, the person could be declared insolvent, but the poor people could not afford the costs of insolvency. What the Bill did for people who were the lowest of the low in poverty terms would happen extra-judicially, outside of the judiciary, which took away the costs of legal representatives and therefore made a type of insolvency accessible to the poor.

Ms Nomsa Motshegare, NCR CEO, noted that clause 29A(bb) on page 18 and suggested that "Debt Counselling Rules System (DCRS)" be changed to "the Task Team Agreement" as the DCRS was owned by a private company. She suggested that the Bill refer to the Agreement.

Mr Lesiba Mashapa, NCR Company Secretary, suggested that the total cost of credit that could be extinguished, be defined. The general understanding of 'cost of credit' was that it was limited to the interest and the fees but not the principal debt. The Bill stated that the total cost of credit could be extinguished. There could be confusion in the market and lawyers could argue that total cost of credit meant that the principal debt or capital could not be extinguished. The definition should indicate that it included capital, interest and service fee and other fees. His second concern was with the power of the Tribunal to reduce interest rates and fees on debt review applications. Changes had been made to Section 87. The problem was that Section 87 of the principal Act only dealt with debt review applications where the consumer was not over-indebted but in debt distress and secondly, where the consumer had been rejected and so had applied to the magistrate where the debt counsellor advised the Magistrate's Court. He suggested in Sect 86(7) (c) "or Tribunal" should be added. That should solve the problem.

The Chairperson asked him to put it in writing so that the Committee had it on the table. The Content Advisor, Ms Sheldon, was ill and not at work so there was no one to manage processes such as amendments.

Legal Advisor response
Adv van der Merwe began with the reference to the Debt Counsellor Rule System in Clause 29 on page 18, lines 37 and 38. The Bill was not talking about a system that one had to tender for, but the rules that underpinned the system. The term "Task Team Agreement" was too vague. It was about considering and reflecting on the rules in the DCRS, not the system itself. The rules were well known in the industry. The Clause simply said that the Minister had to reflect on the content of the rules in the guidelines.

Regarding the issue about "total cost of credit", Adv van der Merwe did not agree with Mr Mashapa. The term was only used in Clause 15(3) on page 10 and there it was linked to section 101(1) which included the principal debt. In line 37, the Bill referred to "… the total cost of credit contemplated in Section 101(1)…" The understanding of cost of credit was therefore clear and no one could misinterpret it. She would be amazed if anyone thought that the principal debt was not included. Adv van der Merwe did not think it was necessary to provide a definition as the Act itself provided a definition.

The Chairperson asked Members to consult the principal Act.

Adv van der Merwe responded to the point about the powers of the Tribunal in respect of the reduction in interest. Clause 14 Section 87 (page 9 line 43) of the Bill talked about what a magistrate or Tribunal could do. That included conducting a hearing, plus having access to debt counsellor's assessment plus considering the consumer's financial means and the prospects of the consumer. Once the magistrate had all of that information, he might make an order. That same right was given to the Tribunal, with the necessary changes. That was an amendment by implication but not an amendment to the Act. The reason for that was that Section 86 dealt with debt review. The Bill then borrowed from the nature of debt review, which was not the debt intervention measure. She did not advise the amendment of Section 86. If the Committee wanted to change Section 86, everything would have to change. She emphasised the process that one had to go through to make a change to Section 86.

The Committee had been concerned about the discretion of the magistrate's court to reduce interest. Members had to remember that a magistrate could not just reduce the rate to zero as there was an extensive process, as already noted.

As far as illegal money lenders were concerned, Clause 25 Section 157(C) (page 16, line 38) of the Bill created offences related to registration as a credit provider. Anyone who was acting as a lender or credit advisor, etc and was not registered, was contravening the legislation and was subject to a fine and/or a period in jail. The penalty in Clause 26 Section 151 created a minimum fine of R1 million or 10% of the annual turnover if the person was not a natural person.

Further discussion

Mr Williams responded to the NCR concern about the definition of the cost of credit. He knew that "cost of credit" was defined in Section 101 but the Committee did not want to create a loophole in the Bill. He asked if it was possible for the principal debt not to be written off because there was no definition of the 'cost of credit'.

The Chairperson pointed out that it was an Amendment to a principal Act. The workshops that Members had attended had instructed them to simplify legislation but to retain elegance by not repeating points. She took into account Mr Williams' concern, so she wanted Adv van der Merwe to include that point in her response.

Ms Motshegare asked Adv van der Merwe to make sure that there would be no problem relating to trademark issues, such as a name owned by a private company, when it came to the use of the reference to DCRS, as a private company had developed it, although she understood that that reference made it very clear as to what they were dealing with.

The Chairperson thanked Ms Motshegare for the information.

Mr Mashapa reiterated the need for definition of total debt, i.e. what could be extinguished. The definition of 'unsecured debt' in the principal Act, which had prevented many disputes.

Mr Macpherson referred to offences in Clause 26. It seemed to him that Section 89, in the principal Act, referred to the granting of a loan. If the person loaning the money was not registered, the contract became an illegal contract. He was not sure that 57C(a) was any clearer than the existing legislation. It was clear that it existed in the principal legislation. The issue was about what was being done to apprehend those people. Nothing was being done. Could anything be done to compel SAPS to apprehend those lenders?

The Chairperson explained that there was no law against lending money. That was why the only way SAPS could arrest the mashonisas was when they withheld identity documents. That was a separate offence. SAPS had asked the Committee to draft a clause to address the gap. There was no law prohibiting those people from lending money. The principal Act did not make unregistered lenders illegal. It was an important clause and had to be properly crafted. The Chairperson noted that several issues had been raised and parties opposed to the legislation had raised particular issues. She commented that she found it helpful for Members to relax over lunch and return to the issue later.

Legal Advisor response
Adv van der Merwe clarified the issue around the cost of credit. The Bill currently referred readers to Section 101 subsection (1) for the definition of 'cost of credit'. There were only two options: The Bill could refer to Section 101 subsection (1), or it could repeat Section 101 subsection (1). Because the Bill explained what cost of credit was in Section 101 subsection (1), by referring to that section, there could not be any confusion.

Secondly, it would not be a breach of copyright to mention the name of a system as there was no attempt to make money out of it or to gain any benefit. However, she would consult with copyright experts during the break. Because it was a nod in the direction of the system, she could not believe it would be a problem.

Lastly, the big difference between an unlawful action and an illegal action. An unlawful action had no consequences. Section 89 in the principal Act made the agreement unlawful, but the people who had entered into the agreement had not acted illegally so they could not be arrested. The consumer was protected but the action was not illegal. The Amendment made the action of entering into an agreement to lend money if one was not registered, illegal. The issue of SAPS not arresting people was not a legislative issue, but something that would have to be addressed through oversight by the Committee. It was an oversight matter and not one that could be legislated. In the Amendment, the section that created the offence stated that even if a person did not actually lend money, it was illegal for a person to present oneself as a credit provider if that person was not registered. That was enough for the person to act illegally and to be found guilty of the offence and was far easier to prove than an actual engagement in lending money.

The Chairperson admitted that it was not the easiest piece of legislation, but she believed that it was very helpful to unpack and understand the issues. She indicated that there would be a break for the Members to go for lunch.

Further discussion
The Chairperson stated that the Committee needed to reach a position where Adv van

der Merwe had all necessary instructions to finalise the draft National Credit Amendment Bill in preparation for a clause-by-clause process. She hoped to reach that stage that afternoon so that the final draft for the clause-by-clause discussion would be ready by the following Tuesday. She had two questions for Adv van der Merwe. Had she been able to hold discussions on matters that had come up? Would she need an hour the following morning?

Adv van der Merwe stated that the only outstanding issue was the use of the DCRS. It was not a copyright issue because the Bill spoke about the principles and not the actual system. However, the only reason that the term "Task Team Agreement' had been rejected in favour of "DCRS" was that it was too vague. If the description of Task Team Agreement could be more specifically defined, that term could be used. The NCR had agreed to provide the date for the Task Team Agreement and, once that had been inserted, it would be clear which agreement was being referred to.

The Chairperson noted that the Committee had not yet seen the Task Team Agreement. She asked for a copy of the document from NCR by 10:00 the following day so that the Committee could have sight of the Agreement.

Ms Motshegare agreed to supply copies of the document by the following morning.

Mr Williams explained that the reason that that process had been identified was because the Sub-Committee had needed a current system that could be incorporated into the Bill. He asked what would occur if the Members saw the document and did not agree with it. Would the Committee change the processes? He agreed that there was, in any case, a need to see the document. However, there would be little chance that the Members could make changes.

Mr Radebe supported the Chairperson as the Committee Members had to apply their minds in relation to all aspects of the Bill, so they needed to see the Agreement before them. If there was a problem with the Agreement, the Committee could ask for changes even before the Bill was passed. If amendments were needed, they had to do them there and then, and not wait until the next Parliament and amend the Act. He asked if the advocate had met with Mr Mashapa to discuss the issue of the definition because he should feel comfortable with what was in the Bill.

The Chairperson agreed that the Committee could not proceed without the Agreement. She had put a timing deadline on the receipt of the document as National Treasury had to stay until the Committee had finished work on the National Credit Amendment Bill and she would not want to be the cause of fruitless expenditure with Treasury.

Ms Motshegare stated that the DCRS had been built around the principles of the Task Team Agreement, so it was one and the same thing. She agreed to supply the document before 10:00 on the following day.

The Chairperson indicated to the officials from Treasury that she was doing her best to assist them. Her advice to them was not to book a flight before 12:00 the following day. Her advice was based on her own operations. She explained to the Committee that the Chief Director in attendance had replaced Ms Gibson. The Chairperson asked the Chief Director if she would be able to be at the meeting the following morning.

Ms Olaotse Matshane, Treasury Chief Director for Market Conduct, explained that travel arrangements had already been made for her and her colleague to leave that evening.

The Chairperson accepted the arrangements as it was not a requirement for National Treasury to attend on the following day.

Adv van der Merwe stated that she had not spoken to Mr Mashapa during the break but that she and he had discussed the matter on more than one occasion and did not agree on the matter. It was a drafting issue, so she would discuss it with her drafting colleagues in the Legal Services Office.

The Chairperson agreed that it was a valid point and would leave it there. It had been a decision to simplify legislation and to ensure that it was readable. She knew that the issue had been raised at the Sub-Committee. The following day, the Committee would spend an hour on the matter. She stated that all Committee Members had to be clear of their positions and come prepared the following day to instruct the advocate on what was required in the final draft of the Bill before the line-by-line reading. She thanked Adv van der Merwe and everyone involved in the drafting of the Bill.

National Treasury input

Olaotse Matshane, Treasury Chief Director for Market Conduct, raised some concerns of National Treasury about the Bill. Firstly, Treasury was concerned about the practicality of administering the Bill. How easy was it to implement all aspects of the Bill? Things on paper looked good but was it implementable and would it assist the poorest of the poor? Secondly, was the issue of the financial literacy clause. What was the expectation from the Minister of Finance regarding funding? Thirdly, Treasury needed clarification regarding the use of the two terms ‘ financial literacy’ and ‘financial capability’. In some instances, in the Bill, the word ‘and’ was used and in other instances, it was ‘or’. In the understanding of Treasury, financial literacy did not mean financial capability. It did not mean that the consumer knew, understood and could apply the financial understanding. The two terms were used in a confusing manner. It could not be either/or. Ms Matshane added that she was working with the old version of the Bill.

The Chairperson noted that National Treasury was not working from the latest copy. She also queried the hand-over procedures at Treasury. The Bill had had the terms 'financial literacy’ and ‘financial capability’ the other way around and Treasury had asked the Committee to make the change. That was why she was asking about the hand-over procedures. It was possible that Ms Matshane had not been briefed.

Ms Mantashe asked National Treasury what their concerns were about practical implementation of the Bill as implementation had been discussed throughout the process and Treasury had attended all meetings, including Sub-Committee meetings.

The Chairperson was concerned but blamed the hand-over.

Mr Macpherson stated that the Committee should not discount the concerns of

National Treasury. He had raised, quite sharply, a number of questions about implementation. Who was going to do it? How long would it take? How long would it take for the NCR and the NCT to come up to speed? What were the timeframes? He still awaited a chartered plan that would indicate if the Bill were enacted on a particular date, by x date, the NCR would have its staff in place, the NCT would have its staff in place, the budget allocations from DTI would have been done and, if not, when the budget would be finalised, etc. Those were the details that it was important to specify.

His colleague, Mr Hill-Lewis, had warned that people did not want expectations to be raised that debt would fall the following day. "Fees must fall" had rapidly developed into protest action, and he believed that 'debt must fall' would lead to a far larger protest if it did not happen quickly enough. Parliament would not be able to deal with it. He really thought it did not help to tell National Treasury that it should have raised the questions at the beginning. The questions should continue to be raised until there was final certainty. The DA could not support a Bill until the DA was sure how the legislation would be implemented. There was nothing worse than creating legislation that was not implementable.

Mr Radebe stated that what the DA was raising had been addressed. The DDG of DTI had given estimated costs to the Committee and how those cost would be met. Mr Radebe noted that he had been out of the Committee for quite some time, but when he heard the inputs of the NCR and NCT, he was very impressed because those people knew what they were doing. He saw their hunger for helping the most vulnerable people. It was a question of whether the glass was half-full or half-empty. He preferred to go with half-full. Even when the National Credit Act was drafted, many people were sceptical but now people from Western countries came to South Africa to learn about the National Credit Act. It was not something new. Everything would be monitored. Nothing man-made would be perfect but people were determined to help the poorest of the poor.

Ms Mantashe hoped that the view of Treasury was not undermining the work of the Portfolio Committee.

The Chairperson stated that when one was new, there were rites of passage and one made mistakes. She stated that the representative from National Treasury should have raised her hand during the process. She should have chosen to speak at the relevant time, but the Chairperson was being lenient as Ms Matshane was new.

Ms Matshane stated that National Treasury was not undermining the work of the Committee. However, Treasury wanted its concerns about implementation recorded in the minutes. She asked for clarification of the issue of financial literacy. The issue of arresting the mashonisas was unrealistic. She had read research by Wonga - Committee Members groaned at the mention of Wonga. Ms Matshane laughed at their reaction, stating that her boss had had the same reaction. She indicated that Wonga had found that the mashonisas were entrenched in society and it was unlikely that SAPS would be arresting them. It was optimistic, but not practical. It was the view of Treasury that government had to be realistic. Earlier that morning, there had been a discussion about unintended consequences and that there was evidence that there would be no unintended consequences. People in the room would never know about the unintended consequences. It was not the people in the room but people going to the banks for a loan who might experience those unintended consequences. The South African economy was very different from that of other countries.

Mr Williams reminded National Treasury that it had participated very robustly in the issues in the Sub-Committee and it was opportunistic to make such statements at that point. National Treasury was raising issues that had not been supported in the Sub-Committee where it had been an integral part of the drafting of the Bill. It was a bit surprising, and disappointing.

The Chairperson explained to the Chief Director that Mr Williams had chaired the Sub-Committee for more than two years.

Mr Radebe said that the Committee should consider the concerns of National Treasury, but he asked National Treasury which law had been perfect when passed. For example, the legislation relating to domestic workers had been very unpopular and it was impossible to check every single domestic worker but there were random checks and they had had the required effect. Even if it was impossible to extinguish every mashonisa, they had to know what would happen to them if they were caught.

Mr G Cachalia (DA) referred to Mr Macpherson's emphasis on the importance of the credit industry. It was the very lifeblood of the economy and the economy was what allowed the Members to sit there and for people to eat, live and breathe. It would be utterly remiss of the Members not to ensure that they crossed all the t's and dotted all the i's in the extraordinary and important Bill. He took issue with Mr Williams' indecent haste to pass the Bill without crossing all the t's and dotting the i's. He welcomed the important issues raised by Treasury and the Committee needed to address the matter until the cows came home.

The Chairperson reminded Mr Cachalia that Mr Williams was not the one driving the completion of the Bill. Parliament had put the deadline. She reminded him that all parties agreed to the Bill when she had raised the matter in Parliament. The issues had been discussed since the previous term of Parliament and the NCR and Treasury had both asked the Committee, in the previous Parliament, to address the issue. The Bill was almost too late, but better late than never.

The Bill had also been called an election Bill, but elections came around every five years. When something had been put on the table in the September after the elections, how could it be called an election Bill for the five years ahead? It was quite frankly ridiculous as the Committee had been working on the Bill since that time. She did not want to see Mr Williams taking responsibility for pushing the Bill with undue haste, but Mr Cachalia had raised an important point. The Committee had to give due consideration to every issue raised, no matter how late. However, the same issues had been raised over the years until Treasury had no problems except x and y. The Committee had made the changes requested in terms of financial literacy, but it seemed that Treasury had changed its mind. There was no problem in changing one's mind if it resulted in a robust piece of legislation. It would be irresponsible not to put forward a piece of legislation that could not be accommodated in the socio-economic environment.

The Committee did not say to hell with everything because it wanted the Bill in the following week. That was the wrong approach. She had never chaired a Committee in which a Bill from her Committee had been kicked out and it was not going to change. It was important to tell Treasury that Treasury had agreed to many things. It was clear that the Chief Director had not been made aware of National Treasury's position previously and such things happened when there was a change. The Chief Director had not said that she had been made aware of the issues. It was important that all Members of the Committee were aware that the Committee needed Treasury to ensure that it was a robust piece of legislation.

The Chairperson handed over to Adv van der Merwe.

Adv van der Merwe stated that in respect of practicalities, she believed that the point had been responded to. The Committee had worked long and hard on that issue. The Bill would be implemented in phases to allow for operational measures.

In respect financial literacy, she stated that initially the Bill had asked that the Minister of Finance fund the training programmes. However, during the study tour, Members had seen a couple of ways of funding the training, such as through appropriation or through a levy. However, both of those would be Money Bills, which the Committee could not introduce.
Because the Committee could not write a funding Bill, the Committee could do nothing about funding, so the regulations stated that the Minister should be consulted about ways of funding the programme. The Bill provided a clear role for the Minister of Finance in acknowledgement of that was where the decision would be taken. Treasury had also indicated that it did not need a funding Bill as DTI had certain funds and the programme could simply latch on to that.

Regarding the use of the term 'financial literacy', she explained that National Treasury had proposed the use of the term 'financial capability' but DTI had wanted to use the term most commonly understood, which was financial literacy. However, the definition of 'financial literacy' in the Bill encompassed the understanding of financial capability.

The Bill was an enabling document and not a magic wand, so it could not make things happen. However, previously, it was not possible for SAPS to arrest illegal lenders as it was not a crime to lend money, but the Amendment had made it a crime, so it was now possible for SAPS to arrest people. However, that was an oversight matter and the Department would have to work with SAPS. As far as the unintended consequences were concerned, she could not go into it, but the Committee had gone into the matter and a further impact study would be undertaken.

Dr Masotja stated that the DTI and the entities were looking at implementation processes and her last presentation had talked to implementation processes. It was a new Bill and, although she agreed that there might be teething problems, that did not mean that there were not measures that one could implement to close those gaps. What the Committee was doing was a very admirable thing as there was a huge need in society for the Bill. She knew that there were issues about cost and so on, but things could not be left as they stood. People were committing suicide and taking other destructive actions that came with over-indebtedness. The Committee was attempting to assist those not catered for in society.

In respect of finance, DTI would have to work closely with the Department of Finance to create an enabling provision to ensure that financial literacy was provided for.

The choosing of the term ‘financial literacy’ was an operational decision, although she understood the policy perspective. The intention of financial capability was captured in the Bill, so it was better to go forward with a known term. DTI was sure that by the time the Bill was passed, DTI and the entities would be ready.

The Chairperson had allowed the advocate and DTI to respond because Treasury had only just made its point. She would allow two Committee Members to close the discussion.

Mr Macpherson asked National Treasury if it supported the latest draft of the Bill as the Bill had changed substantially since the memorandum had been presented to the House. Did the Minister of Finance support the Bill before the Committee?

He noted that DA had agreed with the memorandum presented to Parliament and pointed out a number of issues that had not been addressed in the Bill. It would facilitate the enforcement of the Act. Part B was to be able to criminally prosecute those who contravened the Act and that had been achieved. Part C was about legal certainty and that had been dealt with. Part D was an effective debt counselling framework for low income workers, which had not been addressed. Part E was the capped debt relief to change the borrowing habits of an over-indebted society and that had not been fully realised.

Before the Committee went through the Bill clause-by-clause, he believed that a number of issues had not been addressed and he was deeply concerned that the Committee had not heard oral submissions on the amendments. At least one part of the Memorandum had not been dealt with. He asked Members to step back and check whether the Committee Memorandum as presented in Parliament had been adhered to or the Committee would have failed the South African people. The Chairperson had said that it was not an election Bill and it should not be seen as that.

Mr Williams said that it was important not to see the Memorandum as a tick list of what had to be done. Some things were impossible to do and that was found out in the Sub-Committee where the Memorandum had been the guiding document. Specifics in the Memorandum would have made the Bill even more convoluted than it already was. The Sub-Committee had not been disregarded but had been the guiding document in the early stages of developing the Bill.

The Chairperson reiterated that National Treasury had attended the Sub-Committee and Committee meetings. The Committee Secretary had sent all the documentation to Treasury. She suggested that the Chief Director speak to the Deputy Director-General, Mr Momoniat, as National Treasury had not attended two meetings, although the documents had been sent to National Treasury.

The Chief Director confirmed that National Treasury had not seen the final Bill.

However, National Treasury supported the spirit and intention of the Bill.

Mr Macpherson reiterated his question and asked for the responses to be sent in writing.

Closing remarks
The Chairperson reminded the Committee that a Minister always inherited his predecessor's decisions. The current Minister had not been Minister when work on the Bill had begun. It was unfair to intimidate National Treasury, which had only just received a copy of the Bill, to make its position clear. The officials were unable to say whether they supported a document that they had only just been given to them. She asked the Chief Director to consult with Ms Gibson and to review the final version. She thanked the two representatives from National Treasury for coming to the meeting. She looked forward to a constructive engagement with Treasury.

She thanked the Committee for working so hard on the Bill. National Treasury and the Minister of Finance had asked for the Bill. The Minister of Justice had also made it clear that, previously, SAPS could not arrest the mashonisa as there had been no law against lending money. She knew that it was not a magic bullet, so it would not eliminate all mashonisa. Murderers were still running around even though there were laws against murderers. She thanked Mr Macpherson for his input, and Ms Mantashe for reminding the Committee about the reason for the Bill. She thanked Mr Williams. The Bill was not just about debt but also about saving, which was something that the Committee should not forget.

The Committee Secretary presented the Committee Programme. The Committee would continue with the Copyright Bill that afternoon and the following day but would not consider the Bill on Thursday. The National Credit Amendment Bill would be dealt with on Wednesday and again the following Tuesday.

The Chairperson added that on Wednesday from 9:00 to 10:00, the Committee would instruct the advocate on the Bill. The clause-by-clause process would occur on Tuesday 21 August 2018.

The meeting was adjourned.