



**the dti**

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Department:  
Trade and Industry  
**REPUBLIC OF SOUTH AFRICA**

**Consumer and Corporate Regulation Division**

**Briefing on the National Credit Amendment Bill, 2018 to  
SAFARI**

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## Content of the Presentation

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## Background on the Development of the Bill (1)

- **13 October 2016:** Portfolio Committee on Trade and Industry adopts a resolution to initiate legislation for debt relief measures;
- **15, 17 and 25 November 2016:** The Committee engaged various credit industry stakeholders on possible debt relief measures;
- **2 March 2017:** National Assembly permits the Committee to develop a Bill;
- **17 May 2017:** the dti briefs the Committee on the policy considerations;
  - Briefings by **National Treasury** (30 May 2017) and the **Department of Justice and Constitutional Development** (13 and 27 June 2017);
- **24 November 2017:** Draft Bill is published for public input;
  - The Committee received 31 submissions; and
- **30, 31 January 2018, 2 and 13 February 2018:** Public hearings



## Background on the Development of the Bill (2)

- **February 2018 – June 2018:** Further deliberation and consultation: including NEDLAC input, legal opinions, statistics by National Treasury (Eighty20) and the National Credit Regulator (NCR);
- **April / May 2018:** Study tour to the United Kingdom: The UK experienced insignificant moral hazard and unintended consequences were negligible;
- **July 2018:** Legal opinion on the Constitutionality of the Bill:
  - the debt intervention measure **is substantially and procedurally fair** and should pass constitutional muster;
  - **the power to the Minister to prescribe a debt relief measure** constitutes delegation of plenary powers and is unlikely to pass constitutional muster.
- **12 September 2018:** Bill 30-2018 passed by the National Assembly (NA) and transferred to the National Council of Provinces (NCOP).



## Rationale of the Bill

- Existing debt relief and natural person insolvency measures are not accessible to all consumers;
- Insolvency / Sequestration requires benefit to credit providers;
- Administration and Debt Review not affordable for some consumers;
- Not providing suitable alternative measures subjects these consumers to unjustified and unfair discrimination on socio-economic grounds.



## Main Themes of the Bill

- **Create a targeted debt intervention** measure for over-indebted low income consumers unable to afford existing debt relief measures;
- Address some **deficiencies around reckless lending**;
- Providing for **possible compulsory credit life insurance** (may be prescribed) in certain instances;
- Provide for **better enforcement of the National Credit Act (NCA)**, including measures to criminalise unlawful actions so that **enforcement is not limited to civil actions**; and
- **Correct deficiencies in the powers of Magistrate's Court** related to debt relief measures.



## Debt Intervention Measure - Administrative

### Who will administer the debt intervention measure?

- Clauses 3, 6 and 13: The debt intervention measure will be **administered and processed by the NCR without charge** to a qualifying applicant.

### How will information about debt intervention applications be stored?

- **Clause 6:** NCR to keep a record of debt intervention measure applications;
- **Clause 7:** Information related to debt intervention measure applications to be accepted by Credit Bureaux without charge to the NCR;



## Debt Intervention Measure – Qualifying Criteria

**Who qualifies?** Clauses 1(b) and Clause 13 (section 86A(1)):

- **Natural person (or joint estate);**
- With **unsecured** credit agreements of no more than **R50,000**;
- Income of **R 7,500 or less** per month;
- **over-indebted**; and
- **Not sequestrated** or subject to an **administration order**.

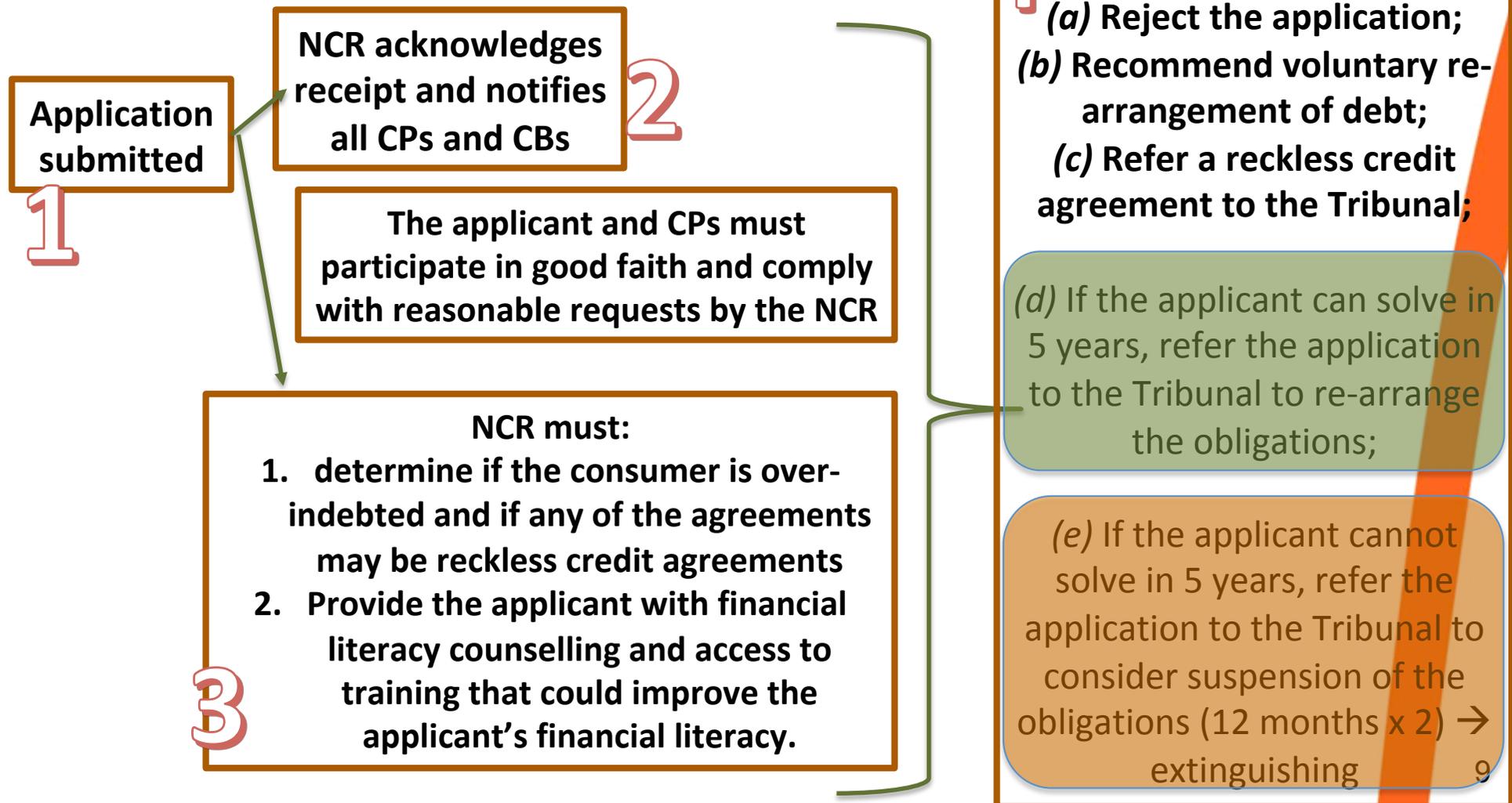
**Are any agreements excluded?** Clause 1(b) and Clause 13 (Section 86A(2))

- A **secured credit agreement**;
- Credit agreements **where the credit provider has started legal proceedings**.



## Debt intervention measure - The application process (1)

- **Clause 13, section 86A(3) to (11)**
  - Duplicating the debt review process (s86).





## Debt Intervention Measure - The Application Process (2)

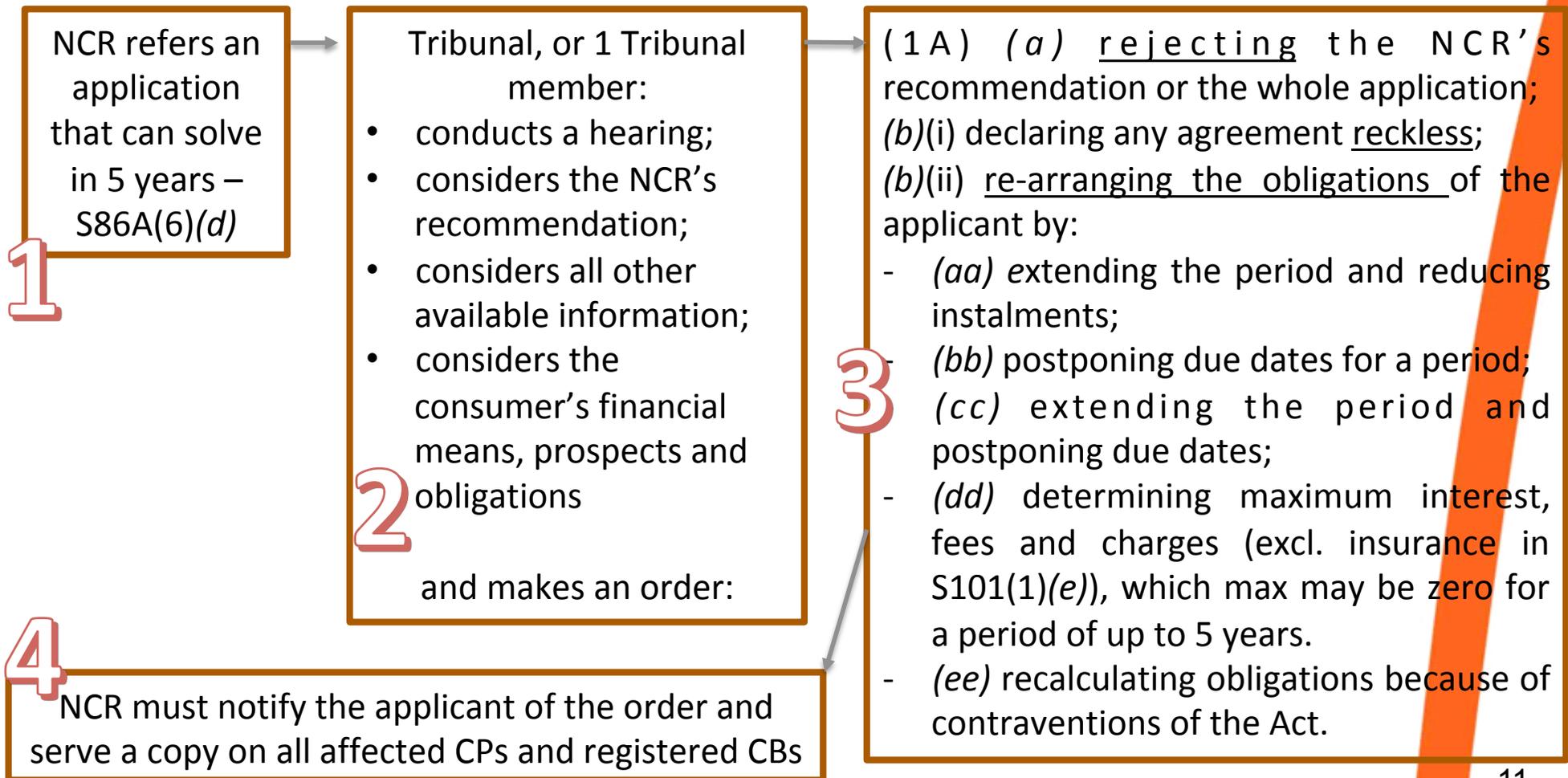
### Clause 13:

- **S86A(7):** If the **NCR rejects an application**, the consumer may approach a Magistrate's Court for a debt review order;
- **S86A(8):** If the **NCR recommends voluntary re-arrangement** and the parties:
  - reach agreement: Proceed with a consent order (s138); or
  - does not reach agreement: Refer the matter to the Tribunal.
- **S86A(9):** If the **NCR refers an application for suspension and subsequent extinguishing**, the NCR must notify each affected credit provider, who may submit written representations to the Tribunal.



## Debt intervention measure – Re-arranging obligations

- **Clause 14: Duplicates section 87(1), which sets out the powers of the Magistrate’s Court iro debt review.**





## Debt Intervention Measure - Suspension → Extinguishing Debt (1)

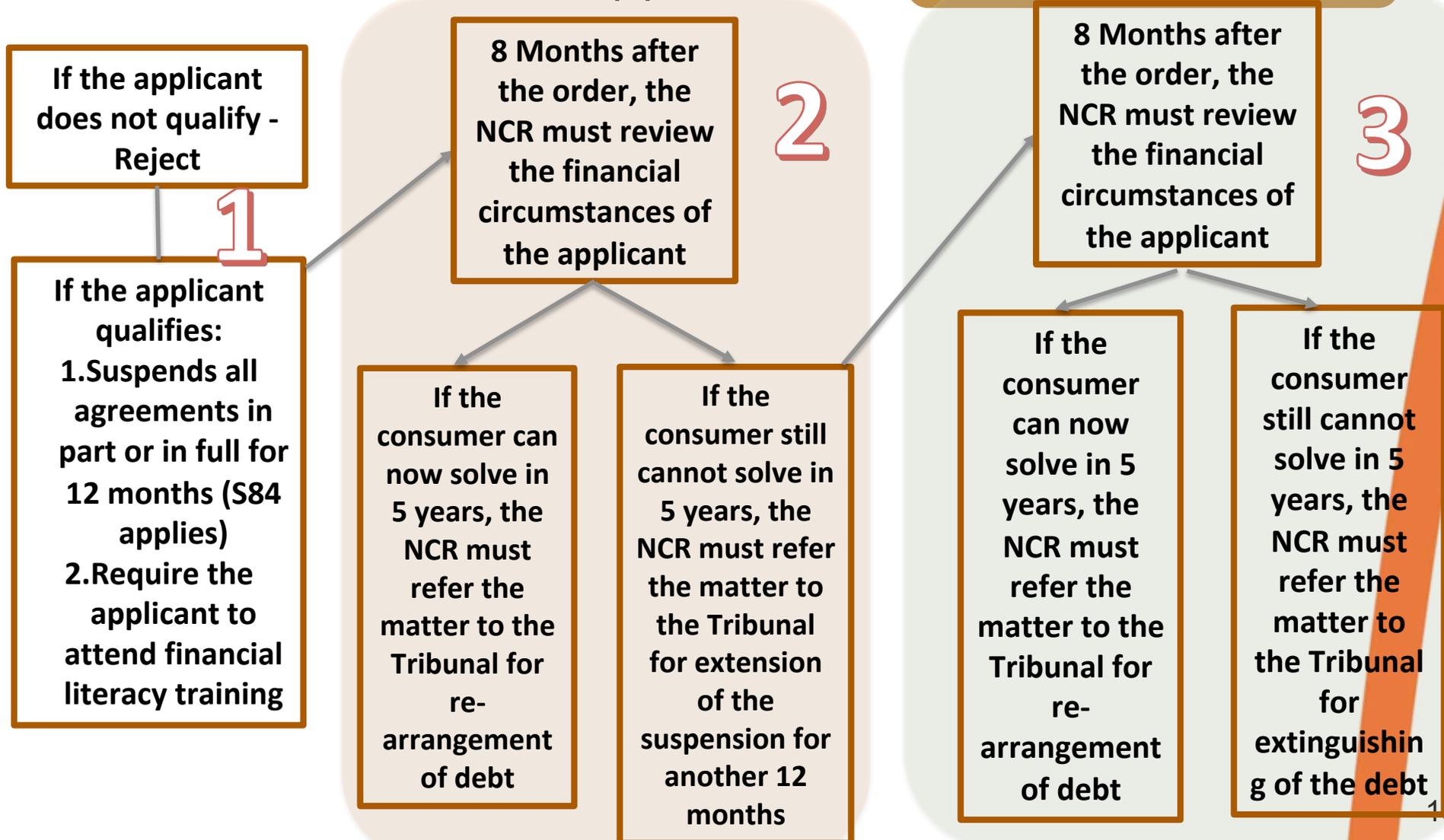
### Clause 15: Inserts section 87A

- **Suspension:**
  - S87(4)(a): S84 applies, i.e. **no charges or interest** run during this period, the consumer need not make payments and the **Credit Provider cannot enforce the contract;**
  - S87A(4)(b): If a debt would prescribe during suspension, another year is allowed after suspension ended.
- S87A(5)(d): Every time the NCR refers the matter to the Tribunal – for suspension, extension of suspension, or extinguishing – **the NCR must inform the affected credit providers, who may make representations to the Tribunal.**



## Debt intervention measure - Suspension → extinguishing (2)

- The orders – subsection (2):





## Debt Intervention Measure - Extinguishing Debt

- The **total of the amounts in section 101(1)** may be extinguished in respect of each qualifying credit agreement – S86A(6).
- The extinguishing may be **a percentage of the total amounts**, provided it applies equally to all credit agreements affected by the application – S86A(7).
- When extinguishing debt, the Tribunal must also **limit the applicant's right to apply for credit for at least 6 months** and may increase this period up to 12 months.
- The Tribunal may rescind or amend an order if information is placed before it shows the applicant was dishonest or fails to comply with the order.



## Debt Intervention Measure – Effect and Rehabilitation

### Clause 16, Section 88A: Effect of debt intervention:

- Applicant **cannot conclude further credit agreement**, (excl. agreements to provide debt intervention) until all re-arranged obligations are fulfilled or the period of limitation after extinguishing of debt has lapsed.
- **Credit Providers may not enforce credit agreements** by litigation or judicial process until all re-arranged obligations are fulfilled.
- If debts were extinguished all rights to enforce cease.

### Clause 16, Section 88B: Rehabilitation

- An applicant who has **repaid in full and has attended financial literacy training** may apply for rehabilitation.
- NCR must **notify all affected credit providers**.
- NCR must **notify the applicant of the rehabilitation order** and must serve a copy of the order on each affected credit provider and credit bureau.



## Reckless Lending

- The NCA requires a debt counsellor to consider whether a credit agreement is reckless only if the consumer makes such a request.
  - **Clause 12 now requires a debt counsellor to ALWAYS consider whether a credit agreement is reckless.**
- Clause 10 requires a **debt counsellor to report suspected reckless lending to the NCR for investigation** (where debt review is not recommended), **or to a Magistrate's court (with the debt review referral)**



## Credit Life Insurance

- Clause 19(b): The Minister of Trade and Industry, after consultation with the Minister of Finance, is empowered to introduce regulations making **credit life insurance compulsory for all unsecured credit that is extended for 6 or more months up to a value of R50 000.**
- Clause 19(e): In this regard, the Minister of Trade and Industry, **in consultation with the Minister of Finance, must further prescribe a cap on the cost of such credit life insurance.**



## Offences and Penalties

- **Clause 25 and 26**
- Section 157A: **Offence to intentionally submit false or misleading information** when applying for or to qualify for debt intervention;
- Penalty: a **fine or imprisonment not exceeding two years** (or both), and a permanent prohibition for applying for debt intervention;
- Section 157B: **Offence to intentionally participate in conduct that is currently made unlawful by the NCA;**
- Penalty: a **fine or imprisonment not exceeding 10 years** (or both);
- Section 157C: Offence to operate as a credit provider, credit bureau, debt counsellor, payment distribution agent or an alternative dispute resolution agent, **without having registered as is required by the NCA;**
- Penalty: a **fine or imprisonment not exceeding 10 years** (or both);
- Section 157D: **Offences by a non-natural persons, the director or prescribed officer who knowingly was a party to the contravention** would be guilty of an offence;
- Penalty: a fine or imprisonment not exceeding 10 years (or both).



## Strengthening the Powers of the Magistrate's Court

- **Clause 11** Magistrate to intervene where a consumer appears over-indebted:
  - The **Magistrate may enquire whether the consumer wishes to participate in debt intervention, and if so, refer the consumer to the NCR, or adjudicate the matter as a debt intervention application.**
- **Clause 12(b)** Magistrate's Court to determine the maximum rate of interest, fees or other charges (but not insurance charges) under a credit agreement as part of the debt review process.
- **Clause 29(a)** Minister must prescribe guidelines on how the court should apply this power to reduce the cost of credit.
  - **One of the main determinations is the formalisation of the existing voluntary Task Team Agreement that guides credit providers and debt counsellors on how to restructure debt so that consumers can solve within 60 months.**
  - These regulations must differentiate between the lowering of the rate of interest between unsecured and secured loans.



## Consequential Amendments (1)

- **Clause 4: Amends section 27 to add the adjudication of a “referral” (by the NCR) to the powers of the Tribunal.**
- Clause 5: Amend section 60 to make it 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 to empower the Tribunal to make an order related to unlawful credit agreements or unlawful provisions of credit agreements.
  - The NCA currently only provides for the Magistrate’s Court to make an order in this regard.
- Clause 20: Amends section 129 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.



## Consequential Amendments (2)

- Clause 22: Amends section 137 of the NCA so that the **NCR may refer debt intervention applications to the Tribunal.**
- Clause 23: Amends section 142 of the NCA to provide that debt intervention applications may be considered by a single member of the Tribunal.
- Clause 24: Amends section 152 of the NCA so that it is clear that orders of the Tribunal are also binding on consumers and credit providers.
- **Clause 27: Amends section 164 of the NCA to provide for the Tribunal's jurisdiction to declare an agreement or a provision unlawful.**
- Clause 28: Amends section 165 of the NCA 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”.**



## Consequential Amendments (3) - Regulations

- Clause 29: **the Minister is empowered to make regulations on:**
- The participation in a **financial literacy programme;**
- The **determination that the Magistrate and Tribunal member can make in respect of the maximum interest, fees and other charges (guidelines);**
- Adjustment of the **qualifying amounts for debt intervention;**
  - The Minister may only adjust the amounts once per year and thereafter every 24 months.
  - In doing so, **the Minister must consult stakeholders; table a report in the National Assembly summarising the consultations and provide the rationale for the proposed adjustment.**
  - The NA may then approve the proposed adjusted amount.



## Transitional Provision and Short Title

- **Clause 31 provides that the 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 for 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 and credit bureaux to update their systems and make provision for the new debt intervention measure.** It also allows the NCR to appoint the necessary staff to administer the measure.



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**END**