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Government Gazette

REPUBLIC OF SOUTH AFRICA

Vol. 650 | Cape Town / Kaapstad | 19 August 2019 | No. 42649

THE PRESIDENCY

No. 1081 19 August 2019

It is hereby notified that the President has assented to the following Act, which is hereby published for general information:—

Act No. 7 of 2019: National Credit Amendment Act, 2019

IHHOVISI LIKAMONGAMELI

No. 1081 19 August 2019

Ngalokhu kwaziswa ukuthi uMongameli usewuvumile loMthetho nosewuzoshicilelelwa umphakathi:—

Ino. 7 Ka 2019: Umthetho Ochibiyela uMthetho weziKweletu KuZwelonke, wezi-2019

ISSN 1682-5843

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GENERAL EXPLANATORY NOTE:

[ ] Words in bold type in square brackets indicate omissions from existing enactments.

Words underlined with a solid line indicate insertions in existing enactments.

(English text signed by the President)
(Assented to 27 June 2017)

ACT

To amend the National Credit Act, 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.

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PREAMBLE

WHEREAS the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), is to promote and advance the social and economic welfare of South Africans; to promote a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market industry; and to protect consumers;

AND WHEREAS there are categories of consumers for whom existing natural person insolvency measures are inaccessible, either because of the focus that these measures place on benefit to credit providers, or the cost involved with such natural person insolvency measures;

AND WHEREAS without suitable alternative natural person insolvency measures being made available to over-indebted individuals who do not have sufficient income or assets to show benefit to creditors, to afford the costs associated with an administration order, or to be an economically viable client for a debt counsellor, it is not only an insurmountable challenge for them to manage or improve their financial position, but it also amounts to unjustified and unfair discrimination on socio-economic grounds;

AND WHEREAS to give effect to the purpose of the National Credit Act, 2005 (Act No. 34 of 2005), all consumers must be afforded protection through fair, transparent, sustainable and responsible processes,

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Amendment of section 1 of Act 34 of 2005, as amended by section 1 of Act 19 of 2014

1. Section 1 of the National Credit Act, 2005 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the insertion after the definition of ''confidential information'' of the following definition:

'' **'Constitution'** means the Constitution of the Republic of South Africa, 1996;'';

(b) by the insertion after the definition of ''credit co-operative'' of the following definitions:

'' **'debt intervention'** means a measure as contemplated in section 86A, which aims to assist identified consumers for whom existing natural person insolvency measures are not accessible in practice;

'debt intervention applicant' means a natural person, or natural persons who own a joint estate, who on the date of submission of the application for debt intervention contemplated in section 86A—

(a) is a consumer under unsecured credit agreements, unsecured short term credit transactions or unsecured credit facilities only;

(b) receives no income, or if he or she, or the joint estate, receives an income or has a right to receive income, regardless of the source, frequency or regularity of that income, that gross income did not, on an average for the six months preceding the date of the application for debt intervention exceed R7500 or such an amount as may be prescribed by section 171(2A)*(a)*, per month;

(c) is over-indebted, whether due to a change in personal circumstances or other circumstances; and

(d) is not sequestrated or subject to an administration order;'';

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(c) by the insertion after the definition of ''equality court'' of the following definitions:

'' **'extinguish'** means, save as is specifically provided in this Act—

(a) the cessation of all rights and obligations inherent to, or resulting from, a credit agreement; and

(b) the cessation of any rights or obligations that may arise in law, whether statutory or otherwise, because of the cessation contemplated in paragraph *(a)*,

prospectively from the date on which the act of extinguishment becomes effective;

'financial literacy' means the knowledge, ability and opportunity to make sound money management choices;'';

(d) by the insertion after the definition of ''juristic person'' of the following definition:

'' **'knowing'** or **'knowingly'**, when used with respect to a person, and in relation to a particular matter, means that the person either—

(a) had actual knowledge of the matter; or

(b) was in a position in which the person reasonably ought to have—

(i) had actual knowledge;

(ii) investigated the matter to an extent that would have provided the person with actual knowledge; or

(iii) taken other measures which, if taken, would reasonably be expected to have provided the person with actual knowledge of the matter;'';

(e) by the insertion after the definition of ''mortgage agreement'' of the following definition:

'' **'National Assembly'** means the House of Parliament referred to in section 42(1)*(a)* of the Constitution;''; and

(f) by the insertion after the definition of ''this Act'' of the following definition:

'' **'total unsecured debt'** means the total of all principal debts due by a debt intervention applicant under the unsecured credit agreements, unsecured short term credit transactions or unsecured credit facilities to which the debt intervention applicant is a party;''.

Amendment of section 3 of Act 34 of 2005

2. Section 3 of the principal Act is hereby amended by the insertion after paragraph *(g)* of the following paragraph:

''*(g*A*)* providing appropriate debt intervention for qualifying consumers;''.

Insertion of section 15A in Act 34 of 2005

3. The following section is hereby inserted after section 15 of the principal Act:

''**Other functions of National Credit Regulator**

15A. (1) The National Credit Regulator must assist a debt intervention applicant—

(a) with the process of being declared over-indebted;

(b) to have his or her obligations, or the obligations of the joint estate, re-arranged;

(c) to have his or her debt intervention application considered for an order contemplated in section 87A; or

(d) to have his or her application for rehabilitation contemplated in section 88B be considered by the Tribunal.

(2) To enable the National Credit Regulator to assist a debt intervention applicant as contemplated in subsection (1), the Chief Executive Officer or any employee duly authorised by the Chief Executive Officer—

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(a) may appoint any suitable employee of the National Credit Regulator, or any other suitable person employed by the State, as a debt intervention officer; and

(b) must issue each debt intervention officer with a certificate in the prescribed form stating that the person has been appointed as a debt intervention officer and as such is deemed to have been registered as a debt counsellor, as contemplated in section 44, for purposes of the services contemplated in subsection (1) only.''.

Amendment of section 27 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008

4. Section 27 of the principal Act is hereby amended by the substitution in paragraph *(a)* for subparagraph (i) of the following subparagraph:

''(i) application or referral that may be made to it in terms of this Act, and make any order provided for in this Act in respect of such an application or referral; or''.

Amendment of section 60 of Act 34 of 2005

5. Section 60 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) **[Every]** Save as is provided in this Act, every adult natural person, and every juristic person or association of persons, has a right to apply to a credit provider for credit.''.

Insertion of section 69A in Act 34 of 2005

6. The following section is hereby inserted after section 69 of the principal Act:

''**National record of debt intervention**

69A. (1) The National Credit Regulator must keep a record of applications for debt intervention contemplated in section 86A, the status of such applications and any orders granted in respect of such applications.

(2) The record related to debt intervention may be published with the consent of the relevant debt intervention applicant, or as is required by this Act or any other applicable law.

(3) The Minister may, in accordance with section 171, prescribe the information to be recorded in the record contemplated in subsection (1).''.

Amendment of section 70 of Act 34 of 2005

7. Section 70 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* a person's credit history, including applications for credit, credit agreements to which the person is or has been a party, pattern of payment or default under any such credit agreements, debt re-arrangement in terms of this Act, incidence of enforcement actions with respect to any such credit agreement, the circumstances of termination of any such credit agreement, an application for, status of and orders granted in respect of debt intervention, and related matters;''; and

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(b) by the insertion in subsection (2) after paragraph *(a)* of the following paragraph:

"*(a*A*)* accept without charge the filing of consumer credit information from the National Credit Regulator related to a debt intervention application, the status of such application and any order granted in respect of such application;".

Amendment of the section 71 of Act 34 of 2005, as amended by section 21 of Act 19 of 2014

8. Section 71 of the principal Act is hereby amended—

(a) by the insertion after subsection (1) of the following subsection:

"(1A) A debt intervention applicant whose debts have been re-arranged in terms of Part D of this Chapter, must be issued with a clearance certificate by the National Credit Regulator within seven business days after the debt intervention applicant has—

(a) satisfied all the obligations under every credit agreement that was subject to that debt re-arrangement order or agreement, in accordance with that order or agreement; or

(b) demonstrated as prescribed—

(i) financial ability to satisfy the future obligations in terms of the re-arrangement order; or

(ii) that there are no arrears on the re-arranged agreements contemplated in subparagraph (i); and

(iii) that all obligations under every credit agreement included in the re-arrangement order or agreement, other than those contemplated in subparagraph (i), have been settled in full,

and the National Credit Regulator must submit a copy of the clearance certificate to all registered credit bureaux."; and

(b) by the insertion after subsection (3) of the following subsection:

"(3A) If the National Credit Regulator decides not to issue or fails to issue a clearance certificate as contemplated in subsection (1A), or fails to submit a copy to all registered credit bureaux, the debt intervention applicant may apply to the Tribunal to review that decision or failure to issue, and if the Tribunal is satisfied that the debt intervention applicant is entitled to the certificate in terms of subsection (1A), the Tribunal may order the National Credit Regulator to—

(a) issue a clearance certificate to the debt intervention applicant; or

(b) submit a copy to all registered credit bureaux.".

Amendment of section 71A of Act 34 of 2005, as inserted by section 22 of Act 19 of 2014

9. Section 71A of the principal Act is hereby amended by the insertion after subsection (3) of the following subsections:

"(3A) The National Credit Regulator must submit proof of the following decisions or orders, together with the date on which the suspension or limitation ends, where relevant, to credit bureaux within two business days of that decision or order being made:

(a) A rejection by the National Credit Regulator or Tribunal of an application for debt intervention;

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(b) an order of suspension made in terms of section 87A(2)*(b)*(i), as well as any extension of the order;

(c) an order limiting the rights of the consumer under section 60 as contemplated in section 87A(8); or

(d) an order for rehabilitation as contemplated in section 88B(7).

(3B) Credit bureaux must remove a listing related to debt intervention within seven days from the date of receipt of proof of a decision contemplated in subsection (3A)*(a)* or as may be applicable from the date—

(a) indicated by the National Credit Regulator as being the date on which the suspension contemplated in subsection (3A)*(b)* ends, unless the National Credit Regulator submitted further proof of—

(i) an extension of the order contemplated in section 87A(2)*(b)*(i); or

(ii) the imposition of a limitation contemplated in section 87A(8); or

(b) indicated by the National Credit Regulator as being the date on which the limitation contemplated in subsection (3A)*(c)* ends,

whichever is the later date.

(3C) Notwithstanding subsection (3B) credit bureaux must remove a listing related to debt intervention within seven days from receipt of proof of a rehabilitation order contemplated in section 88B(7).

(3D) In the event that a credit provider or debt intervention applicant disputes the information submitted by the National Credit Regulator in terms of subsection (3A), that credit provider or debt intervention applicant may apply to the Tribunal to resolve the disputed information and if the Tribunal is satisfied that the information is erroneous, the Tribunal may make any appropriate order to correct the information that gave rise to the dispute.

(3E) Every credit provider who is affected by an order contemplated in section 87(1A) or 87A must, within seven business days from the day on which the order was served on the credit provider, amend the affected credit agreement in accordance with that order and submit the amended consumer credit information to credit bureaux in the prescribed manner and form.''.

Insertion of section 82A in Act 34 of 2005

10. The following section is hereby inserted after section 82 of the principal Act:

''**Report and investigation of reckless credit agreement**

82A. (1) If during an assessment contemplated in section 86(6) there are reasonable grounds to suspect that a credit agreement included in that assessment is a reckless credit agreement, the debt counsellor must report that suspected reckless credit agreement to—

(a) the National Credit Regulator where the debt counsellor rejects the application as contemplated in section 86(7)*(a)* or makes a recommendation contemplated in section 86(7)*(b)*; or

(b) the Magistrate's Court where the debt counsellor makes a recommendation contemplated in section 86(7)*(c)*.

(2) A credit provider must, within seven business days of receipt of a request and at a fee not exceeding the maximum prescribed fee, provide a debt counsellor with the following information requested in relation to the consumer concerned:

(a) Relevant application for credit;

(b) pre-agreement statement;

(c) quote;

(d) credit agreement entered into with the consumer;

(e) documentation in support of steps taken in terms of section 81(2);

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(f) record of payments made; and

(g) documentation in support of any steps taken after default by the consumer.

(3) The report to the National Credit Regulator contemplated in subsection (1)*(a)* is deemed to be a complaint in terms of section 136 and the National Credit Regulator must investigate that report in accordance with section 139.

(4) The Tribunal may impose an administrative fine contemplated in section 151 where a credit provider intentionally fails to comply with subsection (2).''.

Substitution of section 85 of Act 34 of 2005

11. The following section is hereby substituted for section 85 of the principal Act:

''**Court may declare and relieve over-indebtedness**

85. Despite any provision of law or agreement to the contrary, in any court proceedings in which a credit agreement is being considered, if it is alleged or it appears to the court that the consumer under a credit agreement is over-indebted, the court may—

(a) refer the matter directly to a debt counsellor with a request that the debt counsellor evaluate the consumer's circumstances and make a recommendation to the court in terms of section 86(7); **[or]**

(b) declare that the consumer is over-indebted, as determined in accordance with this Part, and make any order contemplated in section 87 to relieve the consumer's over-indebtedness; or

(c) where the consumer may qualify for debt intervention, enquire whether the consumer wishes to participate in debt intervention and if the consumer confirms—

(i) refer the matter to the National Credit Regulator for consideration; or

(ii) where the court has sufficient information to do so, consider the matter and make an order contemplated in sections 87(1A) or 87A.''.

Amendment of section 86 of Act 34 of 2005, as amended by section 26 of Act 19 of 2014

12. Section 86 of the principal Act is hereby amended—

(a) by the substitution in subsection (6) for paragraph *(b)* of the following paragraph:

''*(b)* **[if the consumer seeks a declaration of reckless credit,]** whether any of the consumer's credit agreements appear to be reckless.''; and

(b) by the deletion after subparagraph *(cc)* in subsection (7)*(c)*(ii) of the word ''or'' and the insertion after that subparagraph of the following subparagraph:

''*(cc*A*)* determining, as prescribed, the maximum rate of interest, fees or other charges, excluding charges contemplated in section 101(1)*(e)*, under a credit agreement, for such a period as the Magistrate's Court deems fair and reasonable but not exceeding the period contemplated in section 86A(6)*(d)*; or''.

Insertion of section 86A in Act 34 of 2005

13. The following section is hereby inserted after section 86 of the principal Act:

''**Application for debt intervention**

86A. (1) A debt intervention applicant may apply to the National Credit Regulator in the prescribed manner and form to have the debt intervention applicant declared over-indebted, if that debt intervention applicant has a

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total unsecured debt owing to credit providers of no more than R50,000, or such an amount as may be prescribed by section 171(2A)*(b)*.

(2) The following credit agreements that form part of the total unsecured debt, do not qualify for debt intervention:

(a) A developmental credit agreement contemplated in section 10; and

(b) subject to section 85*(c)*, any credit agreement where, at the time of the application for debt intervention, the credit provider under that credit agreement has proceeded to take the steps contemplated in section 130 to enforce that agreement.

(3) On receipt of an application contemplated in subsection (1), the National Credit Regulator must comply with section 86(4) and (6), with the necessary changes.

(4) A debt intervention applicant, and each credit provider listed in the application for debt intervention, must comply with section 86(5), with the necessary changes.

(5) The National Credit Regulator must, when considering an application contemplated in subsection (1), provide the debt intervention applicant with—

(a) counselling on financial literacy; and

(b) access to training to improve that debt intervention applicant's financial literacy.

(6) If the National Credit Regulator as a result of the assessment contemplated in subsection (3) reasonably concludes that—

(a) the debt intervention applicant does not qualify for debt intervention, the National Credit Regulator must reject the application;

(b) the debt intervention applicant does not qualify for debt intervention, but is nevertheless experiencing, or is likely to experience, difficulty satisfying all the debt intervention applicant's obligations under credit agreements in a timely manner, the National Credit Regulator must recommend that the debt intervention applicant and the respective credit providers voluntarily consider and agree on a plan of debt re-arrangement;

(c) a credit agreement that formed part of the application may constitute reckless lending, an unlawful credit agreement or a credit agreement resulting from prohibited conduct, the National Credit Regulator must refer the credit agreement to the Tribunal for an appropriate declaration;

(d) the debt intervention applicant qualifies for debt intervention, and the obligations of the debt intervention applicant can be re-arranged within a period of five years or such longer period as may be prescribed, the National Credit Regulator must refer the matter with a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87(1A); or

(e) the debt intervention applicant qualifies for debt intervention, but the income and assets of the debt intervention applicant are insufficient to allow for the obligations of the debt intervention applicant to be re-arranged during the period contemplated in paragraph *(d)*, the National Credit Regulator must refer the matter with a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87A.

(7) If the National Credit Regulator rejects an application as contemplated in subsection (6)*(a)*, the debt intervention applicant, with leave of the Magistrate's Court, may apply directly to the Magistrate's Court, in the prescribed manner and form, for an order contemplated in section 87.

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(8) If the National Credit Regulator makes a recommendation in terms of subsection (6)*(b)*, and the debt intervention applicant and—

(a) each credit provider concerned accept that proposal, the National Credit Regulator must comply with section 86(8)*(a)* with the necessary changes; or

(b) a credit provider concerned did not accept the proposal, the National Credit Regulator must refer the matter to the Tribunal with the recommendation.

(9) *(a)* If the National Credit Regulator refers an application for debt intervention in terms of subsection (6)*(e)*, the National Credit Regulator must inform each credit provider listed in the application for debt intervention of such referral and invite such credit providers to make representations to the Tribunal by a specified date.

(b) A credit provider contemplated in paragraph *(a)* may submit written representations to the Tribunal in the prescribed form and manner, on or before the date so specified.

(10) *(a)* If a debt intervention applicant is in default under a credit agreement that forms part of the application for debt intervention in terms of this section, the credit provider in respect of that credit agreement may, after the prescribed period, give notice to terminate the debt intervention in the prescribed manner to—

(i) the debt intervention applicant; and

(ii) the National Credit Regulator.

(b) No credit provider may terminate an application for debt intervention lodged in terms of this Act, if such application for debt intervention has already been filed in the Tribunal.

(11) If a credit provider who has given notice to terminate the debt intervention as contemplated in subsection (10) proceeds to enforce that agreement in terms of Part C of Chapter 6, the court or the Tribunal hearing the matter may order that the debt intervention resume on any conditions the court or Tribunal considers to be just in the circumstances.

(12) *(a)* Subsection (6)*(e)* is effective for a period of 48 months from the date on which it becomes operational.

(b) The Minister must review the impact of section 87A and must, no later than 36 months after subsection (6)*(e)* becomes operational, table a report in the National Assembly setting out the findings of that review.''.

Amendment of section 87 of Act 34 of 2005

14. Section 87 of the principal Act is hereby amended—

(a) by the substitution for the heading of the following heading:

''**Magistrate's Court or Tribunal may re-arrange consumer's obligations**''; and

(b) by the insertion after subsection (1) of the following subsections:

''(1A) If the National Credit Regulator makes a recommendation to the Tribunal in terms of section 86A(6)*(d)*, the Tribunal or a member of the Tribunal acting alone in accordance with this Act, must conduct a hearing and, having regard to the recommendation and other information before it and the consumer's financial means, prospects and obligations, may—

(a) reject the recommendation or application as the case may be; or

(b) make—

(i) an order declaring any credit agreement that forms part of the application to be reckless, and make an order contemplated in section 83(2) or (3), if the Tribunal concludes that agreement is reckless;

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(ii) an order that one or more of the debt intervention applicant's obligations be rearranged 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;

(dd) determining the maximum interest, fees or other charges, excluding charges contemplated in section 101(1)*(e)*, under a credit agreement, which maximum may be zero, for such a period as the Tribunal deems fair and reasonable but not exceeding the period contemplated in section 86A(6)*(d)*; or

(ee) recalculating the consumer's obligations because of contraventions of Part A or B of Chapter 5, or Part A of Chapter 6; or

(iii) both orders contemplated in subparagraphs (i) and (ii).

(1B) The National Credit Regulator must notify the debt intervention applicant of any order contemplated in subsection (1A), and serve a copy thereof in the prescribed manner and form, on—

(a) all credit providers that are listed in the application; and

(b) every registered credit bureau.".

Insertion of section 87A in Act 34 of 2005

15. The following section is hereby inserted after section 87 of the principal Act:

"**Other orders related to debt intervention**

87A. (1) A referral contemplated in section 86A(6)*(e)* may be considered by a single member of the Tribunal in the prescribed manner and form, with reference to the documents included in the referral from the National Credit Regulator and any representations contemplated in section 86A(9).

(2) The Tribunal may, in addition to its other powers in terms of this Act, after having considered the information contemplated in subsection (1) and any other relevant information—

(a) make an order that the debt intervention applicant does not qualify for the debt intervention and reject the application; or

(b) (i) suspend all of the qualifying credit agreements, in part or in full, for 12 months, which period may be extended for one further period of 12 months, taking into account the factors referred to in subsection (3); and

(ii) require the debt intervention applicant to attend a financial literacy programme.

(3) When considering the suspension or part suspension of a credit agreement, an alteration or extension of that suspension, or the extinguishing of the whole or a portion of the total of the amounts contemplated in section 101(1) under a qualifying agreement, the Tribunal must take into account relevant factors, which factors may include the following:

(a) Whether the debt intervention applicant—

(i) is a disabled person, a minor heading a household, a woman heading a household, or an elderly person;

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(ii) had ever applied for debt review or for an order of sequestration or administration; or

(iii) ever had any debt extinguished by an order of a court or Tribunal;

(b) the circumstances of the debt intervention applicant and any act or omission—

(i) when entering into each qualifying credit agreement that makes up the total unsecured debt;

(ii) that resulted in, or contributed to, the fact that the debt intervention applicant does not have sufficient income or assets to allow for the obligations of the debt intervention applicant to be re-arranged during the period contemplated in section 86A(6)*(d)*; or

(iii) by the debt intervention applicant to secure an income or increase existing income; or

(c) an act or omission of each affected credit provider—

(i) when entering into the relevant credit agreement; or

(ii) during the process contemplated in section 86A and during the proceedings before the Tribunal.

(4) *(a)* Section 84 applies to a suspension contemplated in subsection (2)*(b)*(i).

(b) Subject to subsection (6), if the period of prescription in respect of a suspended credit agreement would be completed before or on, or within one year after the day on which the suspension ended, the period of prescription shall not be completed before a year has elapsed after the day on which the suspension ended.

(5) *(a)* The National Credit Regulator must review the financial circumstances of the debt intervention applicant eight months after an order was granted in terms of subsection (2)*(b)*, and determine whether the debt intervention applicant at that time has sufficient income or assets to allow for the obligations of the debt intervention applicant to be re-arranged during the period contemplated in section 86A(6)*(d)*.

(b) The National Credit Regulator must, where the debt intervention applicant—

(i) has sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)*(d)*, refer the matter with a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87(1A); or

(ii) still does not have sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)*(d)*, refer the matter to the Tribunal to consider an extension of the period of suspension as contemplated in subsection (2)*(b)*(i).

(c) If the Tribunal orders an extension of the suspension, the National Credit Regulator must again conduct the review contemplated in paragraph *(a)* eight months into the extended suspension period and where the debt intervention applicant at that time—

(i) has sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)*(d)*, refer the matter with a recommendation to the Tribunal in the prescribed manner and form for an order contemplated in section 87(1A); or

(ii) still does not have sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)*(d)*, refer the matter to the Tribunal to consider the extinguishing of the whole or a portion of the total of the amounts contemplated in section 101(1) under each qualifying agreement.

(d) Section 86A(9) applies with the necessary changes when the National Credit Regulator does a referral contemplated in paragraphs *(b)*(ii) or *(c)*(ii).

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(6) The Tribunal may, in addition to its other powers in terms of this Act, after having considered—

(a) the referral contemplated in subsection (5)*(c)*(ii);

(b) whether the debt intervention applicant still does not have sufficient income or assets to allow for the obligations to be re-arranged during the period contemplated in section 86A(6)*(d)*; and

(c) the factors contemplated in subsection (3),

and subject to subsections (7) and (8), declare the total of the amounts contemplated in section 101(1) under the qualifying credit agreements as extinguished.

(7) The extinguishment contemplated in subsection (6)—

(a) may be a percentage of the total of the amounts contemplated in section 101(1) under each qualifying agreement; and

(b) must apply equally to all the qualifying credit agreements.

(8) When granting an order contemplated in subsection (6) the Tribunal must limit the debt intervention applicant's right to apply for credit contemplated in section 60 for a minimum period of six months and the Tribunal may limit said right for such further period as the Tribunal deems fair and reasonable—

(a) taking into account the factors referred to in subsections (3) and (9); and

(b) subject to the maximum periods referred to in subsection (9).

(9) The total period of limitation on the debt intervention applicant's right to apply for credit contemplated in subsection (8)*(a)* may not exceed 12 months and when determining an appropriate discretionary period, the following factors must also be considered:

(a) The total unsecured debt;

(b) the number of credit agreements that were submitted for debt intervention;

(c) the period of each qualifying credit agreement; and

(d) the debt intervention applicant's credit record.

(10) The National Credit Regulator must notify the debt intervention applicant of any order contemplated in this section, and serve a copy thereof in the prescribed manner and form, on—

(a) all credit providers that are listed in the application; and

(b) every registered credit bureau.

(11) The Tribunal may rescind or change an order for debt intervention if information is placed before the Tribunal showing that the debt intervention applicant who applied for debt intervention was dishonest in his or her application or fails to comply with the conditions of the debt intervention order.''.

Insertion of section 88A and 88B in Act 34 of 2005

16. The following sections are hereby inserted after section 88 in the principal Act:

''**Effect of debt intervention**

88A. (1) A debt intervention applicant who has filed an application for debt intervention contemplated in section 86A may not enter into any further credit agreement, other than a consolidation agreement, with a credit provider unless—

(a) the National Credit Regulator rejects the application for debt intervention and the prescribed time period for direct filing in terms of section 86A(7) has expired without the debt intervention applicant having so applied;

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(b) the Tribunal has determined that the debt intervention applicant is not over-indebted, or has rejected the proposal of the National Credit Regulator or the debt intervention applicant's application;

(c) the Tribunal having made an order or the debt intervention applicant and credit providers having made an agreement re-arranging the debt intervention applicant's obligations and all the debt intervention applicant's obligations under the credit agreements as re-arranged are fulfilled, except where the debt intervention applicant fulfilled the obligations by way of a consolidation agreement; or

(d) the period contemplated in section 87A(8) has expired.

(2) If a debt intervention applicant fulfils obligations by way of a consolidation agreement, the effect of subsection (1) continues until the debt intervention applicant fulfils all the obligations under that consolidation agreement, unless the debt intervention applicant again fulfilled the obligations by way of another consolidation agreement.

(3) A credit provider who receives notice of an application contemplated in section 86A may not exercise or enforce by litigation or other judicial process any right under that credit agreement until—

(a) the National Credit Regulator or Tribunal rejects the application or the debt intervention applicant is in default under the credit agreement; and

(b) one of the following has occurred:

(i) An event contemplated in subsection (1)*(a)*, *(b)* or *(c)*; or

(ii) the debt intervention applicant defaults on any obligation in terms of a re-arrangement agreed between the debt intervention applicant and credit providers, or ordered by the Tribunal.

(4) If a credit provider enters into a credit agreement, other than a consolidation agreement contemplated in this section, with a debt intervention applicant who is expecting, or is subject to, an order related to debt intervention, all or part of that new credit agreement may be declared to be reckless credit, whether or not the circumstances set out in section 80 apply.

(5) If a debt intervention applicant applies for, or enters into a credit agreement contrary to this section, the provisions related to debt intervention will never apply to that agreement.

(6) If the Tribunal ordered that the debt that underlies a credit agreement is extinguished, the credit provider may not exercise or enforce by litigation or other judicial process any right under that credit agreement or arising from that order, in respect of the portion of the debt that the order applies to.

Application for rehabilitation

88B. (1) A debt intervention applicant who was granted an order contemplated in section 87A(6) may in the prescribed manner apply to the National Credit Regulator for a rehabilitation order to be granted by the Tribunal.

(2) The debt intervention applicant must submit proof that he or she has paid the amounts contemplated in section 101(1) as it was due on the date on which the order contemplated in section 87A(6) was granted, under each credit agreement affected by that order, by—

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(a) payment in full to each credit provider of those amounts; or

(b) entering into a settlement agreement with a relevant credit provider to the effect that those amounts have been resolved to the satisfaction of the credit provider.

(3) The application for a rehabilitation order must further be supported by such information as the Minister may prescribe, including proof that the debt intervention applicant has—

(a) improved his or her, or their joint, as the case may be, financial circumstances to such an extent that the debt intervention applicant can participate in the credit market; and

(b) successfully completed the programme contemplated in section 87A(2)*(b)*(ii).

(4) Upon receipt of the application for rehabilitation, the National Credit Regulator must—

(a) notify, in the prescribed manner and form—

(i) all credit providers that were affected by the order contemplated in section 87A(6); and

(ii) every registered credit bureau; and

(b) consider the application for rehabilitation and if the debt intervention application has complied with the requirements contemplated in subsections (2) and (3), refer the matter for consideration by the Tribunal.

(5) If the National Credit Regulator rejects an application for rehabilitation, the debt intervention applicant, with leave of the Tribunal, may apply directly to the Tribunal, in the prescribed manner and form, for an order contemplated in subsection (7).

(6) The Tribunal must notify each affected credit provider of the date on which the application for rehabilitation will be considered.

(7) The Tribunal must consider the application for rehabilitation, any information submitted in support of the application, and any submissions made by an affected credit provider and may grant an order that the debt intervention applicant is rehabilitated if the Tribunal is satisfied that the debt intervention applicant complied with the requirements in subsections (2) and (3).

(8) An order that the debt intervention applicant is rehabilitated has the effect that any limitation on the rights of the debt intervention applicant contemplated in section 60 ends from the date of that order.

(9) The National Credit Regulator must notify the debt intervention applicant of any order contemplated in this section, and serve a copy thereof in the prescribed manner and form, on—

(a) all credit providers that are listed in the application; and

(b) every registered credit bureau.''.

Amendment of section 89 of Act 34 of 2005, as amended by section 27 of Act 19 of 2014

17. Section 89 of the principal Act is hereby amended by the substitution in subsection (5) for the words preceding paragraph *(a)* of the following words:

''If a credit agreement is unlawful in terms of this section, despite any other legislation or any provision of an agreement to the contrary, a court or the Tribunal, as the case may be, must make a just and equitable order including but not limited to an order that—''.

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Amendment of section 90 of Act 34 of 2005

18. Section 90 of the principal Act is hereby amended by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"In any matter before it respecting a credit agreement that contains a provision contemplated in subsection (2), the court or the Tribunal, as the case may be, must—".

Amendment of section 106 of Act 34 of 2005, as amended by section 30 of Act 19 of 2014

19. Section 106 of the principal Act is hereby amended—

(a) by the substitution for subsection (1) of the following subsection:

"(1) A credit provider may require a consumer to maintain during the term of their credit agreement—

(a) where section (1A) is not applicable to the credit agreement, credit life insurance not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement; and

(b) **[either]** credit insurance, other than credit life insurance—

(i) in the case of a mortgage agreement, **[insurance cover]** in respect of the immovable property that is subject to the mortgage, not exceeding the full asset value of that property; or

(ii) in **[any other]** the case of a credit agreement that deals with movable property, **[insurance cover]** against damage or loss of **[any]** the property **[other than property referred to in subparagraph (i)]** that forms the subject matter of the credit agreement, not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of their agreement.";

(b) by the insertion after subsection (1) of the following subsection:

"(1A) Where the term of a credit agreement exceeds six months, or such period as may be prescribed, and the principal debt does not exceed R50 000, or such amount as may be prescribed, the Minister may, after consultation with the Minister of Finance, prescribe requirements for the credit provider to require the consumer to enter into and maintain credit life insurance for the duration of the term of that credit agreement not exceeding, at any time during the life of the credit agreement, the total of the consumer's outstanding obligations to the credit provider in terms of that credit agreement.";

(c) by the substitution for subsection (3) of the following subsection:

"(3) In addition to insurance that may be required in terms of **[subsection]** subsections (1) and (1A), a credit provider may offer a consumer optional insurance in relation to the obligations of the consumer under the credit agreement or relating to the possession, use, ownership or benefits of the goods or services supplied in terms of the credit agreement.";

(d) by the substitution in subsection (4) for the words preceding paragraph *(a)* of the following words:

"If the credit provider proposes to the consumer the purchase of a particular policy of credit insurance as contemplated in subsection (1), (1A) or (3)—"; and

(e) by the substitution for subsection (8) of the following subsection:

"(8) *(a)* The Minister may, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit insurance that a credit provider may charge a consumer.

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(b) Where the requirement contemplated in subsection (1A) is prescribed, the Minister must, in consultation with the Minister of Finance, prescribe the limit in respect of the cost of credit life insurance contemplated in subsection (1A).''.

Amendment of section 129 of Act 34 of 2005, as amended by section 32 of Act 19 of 2014

20. Section 129 of the principal Act is hereby amended—

(a) by the substitution in subsection (1) for paragraph *(a)* of the following paragraph:

''*(a)* may draw the default to the notice of the consumer in writing and propose that the consumer refer the credit agreement to the National Credit Regulator for debt intervention, a debt counsellor, alternative dispute resolution agent, consumer court or ombud with jurisdiction, with the intent that the parties resolve any dispute under the agreement or develop and agree on a plan to bring the payments under the agreement up to date; and'';

(b) by the substitution in subsection (4) for paragraphs *(b)* and *(c)* of the following paragraphs:

''*(b)* the execution of any other court order or order of the Tribunal enforcing that agreement; **[or]**

(c) the termination thereof in accordance with section 123**[.]**; or''; and

(c) by the addition in subsection (4) after paragraph *(c)* of the following paragraph:

''*(d)* the Tribunal ordered that the debt that underlies a credit agreement is extinguished: Provided that where only a portion of the debt due under a credit agreement was extinguished, this subsection applies only in respect of the portion so extinguished.''.

Amendment of section 130 of Act 34 of 2005, as amended by section 33 of Act 19 of 2014

21. Section 130 of the principal Act is hereby amended by the addition after subsection (4) of the following subsection:

''(5) In any proceedings contemplated in this section, if it is shown that the credit agreement was subject to an order contemplated in section 87A(6) and the Tribunal ordered that the whole of the debt underlying that credit agreement was extinguished, the court must dismiss the matter.''.

Amendment of section 137 of Act 34 of 2005, as amended by section 110 of Act 4 of 2013

22. Section 137 of the principal Act is hereby amended by the insertion after subsection (1) of the following subsection:

''(1A) The National Credit Regulator must refer applications for debt intervention that qualifies in terms of this Act, to the Tribunal in the prescribed manner and form.''.

Amendment of section 142 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008

23. Section 142 of the principal Act is hereby amended—

(a) by the deletion in subsection (3) at the end of paragraph *(f)* of ''or''; and

(b) by the insertion in subsection (3) after paragraph *(f)* of the following paragraph:

''*(f*A*)* consideration of a debt intervention application contemplated in section 86A; or''.

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Amendment of section 152 of Act 34 of 2005, as amended by section 121 of Act 68 of 2008

24. Section 152 of the principal Act is hereby amended—

(a) by the deletion in subsection (1) at the end of paragraph *(e)* of ''and''; and

(b) by the insertion in subsection (1) after paragraph *(e)* of the following paragraphs:

''*(e*A*)* a credit provider;

*(e*B*)* a consumer; and''.

Insertion of sections 157A, 157B, 157C and 157D in Act 34 of 2005

25. The following sections are hereby inserted after section 157 of the principal Act:

''**Offences related to debt intervention**

157A. (1) Any person who intentionally submits false information related to debt intervention, or who presents information related to debt intervention in a manner that is intended to mislead the National Credit Regulator or Tribunal, is guilty of an offence.

(2) Any person who intentionally alters his or her financial circumstances, or persons who intentionally alter their joint financial circumstances, in order to qualify for debt intervention, is guilty of an offence.

Offences related to credit agreements generally

157B. (1) A credit provider who intentionally—

(a) participates in an unlawful credit marketing practice contemplated in section 74(2) and (3), section 75(1) or section 91;

(b) does not comply with the limitations to entering into a credit agreement at a private dwelling contemplated in section 75(2);

(c) does not comply with the limitations related to visiting or entering into a credit agreement at a person's place of employment contemplated in section 75(3);

(d) enters into an unlawful agreement contemplated in section 89(2) with a prospective consumer;

(e) includes an unlawful provision contemplated in section 90 in a credit agreement with a prospective consumer; or

(f) offers or demands that a consumer purchases or maintains insurance that is unreasonable, at an unreasonable cost, or is to cover a risk that reasonably cannot arise in respect of that consumer, as contemplated in section 106(2)*(a)* or *(b)* respectively,

is guilty of an offence.

(2) Any person who intentionally sells a debt under a credit agreement to which this Act applies and which debt has been extinguished by prescription under the Prescription Act, 1969 (Act No. 68 of 1969), as contemplated by section 126B(1)*(a)*, is guilty of an offence.

(3) Any person who intentionally continues the collection of, or attempts to re-activate a debt under a credit agreement to which this Act applies under the circumstances contemplated in section 126B(1)*(b)*, is guilty of an offence.

Offences related to registration

157C. (1) Any person who intentionally gives him or herself out to be—

(a) a credit provider, without having been registered under section 39 or section 40, as may be applicable;

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(b) a credit provider of developmental credit, without having been registered under section 41;
(c) a credit bureau, without having been registered under section 43;
(d) a debt counsellor, without having been registered under section 44;
(e) a payment distribution agent, without having been registered under section 44A; or
(f) an alternative dispute resolution agent, without having been registered under section 134A,

is guilty of an offence.

(2) Subsection (1) does not apply if—

(a) at the time the credit agreement was made, or within 30 days after that time, the credit provider had applied for registration in terms of section 40, and was awaiting a determination of that application;
(b) at the time the credit agreement was made, the credit provider held a valid clearance certificate issued by the National Credit Regulator in terms of section 42(3)*(b)*; or
(c) the act in question was a once-off transaction or incidental to the main business of the person contemplated in subsection (1): Provided that the main business of that person may not be the provision of credit, debt counselling, payment distribution or alternative dispute resolution as contemplated in this Act, nor may it be the retention of credit information as contemplated in this Act.

Offence by non-natural person

157D. Where the person who committed an offence in terms of this Act is not a natural person, every director or prescribed officer of that person who knowingly was a party to the contravention, is, subject to the provisions of this Act and any other law, guilty of an offence and subject to the same penalties as if such director or prescribed officer committed the offence in person.''.

Substitution of section 161 of Act 34 of 2005

26. The following section is hereby substituted for section 161 of the principal Act:

''**Penalties**

161. (1) Any person convicted of an offence in terms of this Act, is liable—

(a) in the case of a contravention of section 160(1), to a fine or to imprisonment for a period not exceeding 10 years, or to both a fine and imprisonment; **[or]**
*(a*A*)* in the case of a contravention contemplated in section 157A, to—
(i) a fine or imprisonment not exceeding two years or to both a fine and such imprisonment; and
(ii) a permanent prohibition on applying for debt intervention;
*(a*B*)* in the case of a contravention contemplated in sections 157B or 157C, to a fine or imprisonment not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person as contemplated in section 157D, to a fine not exceeding 10 per cent of its annual turnover or R1 000 000, whichever amount is the greater; or
(b) in any other case not listed in paragraphs *(a)*, *(a*A*)* or *(a*B*)*, to a fine or to imprisonment for a period not exceeding 12 months, or to both a fine and imprisonment.

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(2) When determining an appropriate penalty, the following factors must be considered:

(a) The nature, duration, gravity and extent of the contravention;

(b) any loss or damage suffered as a result of the contravention;

(c) the behaviour of the person convicted of an offence in terms of this Act;

(d) the market circumstances in which the contravention took place;

(e) the value of the credit agreement that formed the basis for the commission of the offence;

(f) the degree to which the person convicted of an offence in terms of this Act has co-operated with the National Credit Regulator or Tribunal; and

(g) whether the person convicted of an offence in terms of this Act has previously been found in contravention of this Act.

(3) For purposes of determining the appropriate penalty contemplated in subsection (1)*(a*B*)*, annual turnover must be calculated in accordance with section 151(4).''.

Amendment of section 164 of Act 34 of 2005

27. Section 164 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

''(1) **[Nothing in this Act renders void a]** A credit agreement or a provision of a credit agreement that, in terms of this Act, is prohibited or may be declared unlawful, is not void unless a court or the Tribunal, as the case may be, declares that agreement or provision to be unlawful.''.

Amendment of section 165 of Act 34 of 2005

28. Section 165 of the principal Act is hereby amended—

(a) by the substitution for the words preceding paragraph *(a)* of the following words:

''(1) The Tribunal, acting of its own accord or on application by a person affected by a decision or order, may **[vary]** change or rescind its decision or order—''; and

(b) by the addition after paragraph *(c)* of the following subsection:

''(2) The Tribunal may change or rescind an order—

(a) if information is placed before the Tribunal showing that a party to the proceedings was dishonest in respect of any fact or argument placed before the Tribunal; or

(b) if the person affected by that order fails to comply with the conditions of the order or fails to comply with this Act.''.

Amendment of section 171 of Act 34 of 2005

29. Section 171 of the principal Act is hereby amended—

(a) by the insertion in subsection (1) after paragraph *(b)* of the following paragraphs:

''*(b*A*)* must make regulations regarding participation in a financial literacy programme after consultation with the Minister of Finance;

*(b*B*)* (i) must make regulations relating to orders that can be made by the Magistrate's Court and the Tribunal in respect of sections 86(7)*(c)*(ii)*(cc*A*)* and 87(1A)*(b)*(ii)*(dd)* respectively; and

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(ii) must, when making the regulations contemplated in subparagraph (i)—

(aa) take existing industry standards and practices into account;

(bb) replicate the requirements set out in the industry guidelines issued by the National Credit Regulator under the Debt Review Task Team Agreements, 2010;

(cc) clearly distinguish between the reduction of rate of interest that may be determined by a Magistrate in respect of unsecured debt, which reduction may be to zero, and the reduction of rate of interest in respect of secured debt, which reduction may not result in the rate being less than the repurchase rate plus such percentage as is indicated in this regard in the industry guidelines contemplated on subparagraph *(bb)*, where the repurchase rate is the interest rate set by the Monetary Policy Committee of the South African Reserve Bank as its policy rate and reflects the rate at which commercial banks borrow rands from it as the central bank of the Republic of South Africa, thereby serving as benchmark for bank lending in the market; and

(dd) require the Magistrate's Court and Tribunal to first apply incremental and proportional reduction when the maximum rate of interest, fees or other charges are considered;''; and

(b) by the insertion after subsection (2) of the following subsection:

''(2A) *(a)* The Minister may once every 12 months, by notice in the *Gazette* and after having considered the following factors, adjust the amount contemplated in the definition of ''debt intervention applicant'' in section 1 in respect of the maximum gross income of a debt intervention applicant:

(i) The gross income required by a consumer to be an economically viable client for a debt counsellor as at the time of the proposed adjustment;

(ii) the cost associated with an administration and sequestration order as at the time of the proposed adjustment; and

(iii) inflation.

(b) The Minister may once every 12 months, by notice in the *Gazette*, adjust the amount of the qualifying total unsecured debt contemplated in section 86A(1), after having considered the effect inflation may have had on that amount.

(c) The Minister must review the amount contemplated in the definition of ''debt intervention applicant'' in section 1 in respect of the maximum gross income of a debt intervention applicant, as well as the amount of the qualifying total unsecured debt contemplated in section 86A(1), 12 months after the commencement of the National Credit Amendment Act, 2018 and thereafter once every 24 months and must table a report on such review in the National Assembly.

(d) Before the Minister makes the adjustment contemplated in paragraph *(a)* or *(b)* the Minister must—

(i) consult relevant stakeholders and table a report summarising such consultations in the National Assembly;

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(ii) table the adjusted amount in the National Assembly, together with the rationale for the adjustment; and

(iii) obtain the approval of the National Assembly in respect of that adjusted amount.

(e) The maximum gross income of a debt intervention applicant whose application is referred under section 86A(6)*(e)*, as well as the total unsecured debt applicable to such an application may not be adjusted as is contemplated in paragraphs *(a)* and *(b)* due to the short term nature of referrals under that section.

Substitution of the long title of Act 34 of 2005

30. The following long title is hereby substituted for the long title of the principal Act:

"**To promote a fair and non-discriminatory marketplace for access to consumer credit and for that purpose to provide for the general regulation of consumer credit and improved standards of consumer information to promote black economic empowerment and ownership within the consumer credit industry to prohibit certain unfair credit and credit-marketing practices to promote responsible credit granting and use and for that purpose to prohibit reckless credit granting to provide for debt re-organisation or debt intervention in cases of over-indebtedness to regulate credit information to provide for registration of credit bureaux, credit providers and debt counselling services to establish national norms and standards relating to consumer credit to promote a consistent enforcement framework relating to consumer credit to establish the National Credit Regulator and the National Consumer Tribunal to repeal the Usury Act, 1968, and the Credit Agreements Act, 1980, and to provide for related incidental matters.**".

Transitional provision

31. Save for clauses 19, 25 and 26, the National Credit Amendment Act, 2018, applies to a credit agreement that was made before the commencement date of the National Credit Amendment Act, 2018, if that credit agreement falls within the application of the principal Act in terms of Chapter 1 of the principal Act**.**

Short title and commencement

32. This Act is called the National Credit Amendment Act, 2019, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.