

FISH HOEK VALLEY RATEPAYERS & RESIDENTS ASSOCIATION

(Incorporating Fish Hoek, Clovelly and Sun Valley)

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**TO: MR A HERMANS ahermans@parliament.gov.za AND
MR T MADIMA tmadima@parliament.gov.za**

**SUBJECT: COMMENTS ON NATIONAL CREDIT AMENDMENT BILL TO REPLACE THE
NATIONAL CREDIT ACT# 34 of 2005
DUE: 15 JANUARY 2018**

1. EXECUTIVE SUMMARY

We don't feel that the Act's Section 81 on "Prevention of reckless credit" is working sufficiently well, specifically 81. (2) (a) (iii) being done properly to prevent (3) "A credit provider must not enter into a reckless credit agreement with a prospective consumer".

Although the goals of this bill are laudable, it has missed the opportunity to actually curb the root cause, which is reckless credit lending. Credit lenders have become brazen due to the history of no or insufficient punishment. They will not provide proof of evidence that proper background affordability checks were done at all to debt counsellors, much less to the courts. Therefore, this bill wanting the credit provider and debt counsellor to determine whether an agreement is reckless will never happen. A debt counsellor does not have the deep pockets of a credit provider to successfully refer matters of debt intervention to the court.

The National Credit Regulator needs sufficient resources in order to properly investigate all cases of reckless lending for successful charges to be laid before the Tribunal. We need more suspension of agreements against reckless lending in order to curb this practice and disbarring of habitual reckless credit lenders.

If the reckless lending were to stop, there would be less need for this bill. Credit providers must provide proof that their clients can afford the "additional" loan. If they cannot afford it, the answer should be a simple "no" to the client's credit application. Then the client should be referred for financial literacy and budgeting skills programme.

Should this Act be combined with the Usury Act #73 of 1968?

2. RECOMMENDATIONS

Therefore, it is recommended that:

The Act's Section 1 includes the definition of "debt intervention" as introduced in the Bill's Section 1.

Following the Bill's example where [square brackets] indicate omissions and underline indicates insertions, it is recommended that:

- An electronic copy of all successfully granted credit applications must be captured into one National database whereby the fee is paid by the applicant (That is, the Act's Section 69. (1) "The Minister [may] must require the National Credit Regulator to establish and maintain, in the prescribed manner and form, a single national register of outstanding credit agreements based on the information provided to it in terms of this section";

- Section 82. (2) (a) “pre-approve the evaluative mechanisms, models and procedures to be used in terms of section 81 in respect of proposed developmental credit agreements wherein the current income exceeds all successfully granted credit applications to date in addition to the one now contemplated plus normal living expenses; and”;
- Section 82. (4) (bA) and consider disbarring the credit provider from making any future credit extensions and thus, stop the requirement of all of these extra measures;
- Credit providers must interrogate the current National database before granting credit. If not already covered in the Bill’s Section 24 on the Act’s Section 161, then add to the Bill’s Section 11 referring to the Act’s Section 82A. (5) (b) refer the reckless credit agreement to the Tribunal for a declaration contemplated in Section 83 recommending a punitive fine be levied on the reckless credit provider;
- Add to the Act’s Section 161 that a suitable fine be imposed on credit providers who fail to update the National database regarding outstanding balance per loan;
- Add to the Act’s Section 170 that credit providers must provide monthly updates to the National database of the outstanding balance per loan and pay for having this information updated on the database;
- Access to the National database may be granted to all registered credit providers, debt counsellors, courts, credit bureaux, in good standing, for an escalating periodic fee payable individually; and
- National Credit Regulator and Tribunal may have free access to the National database, *inter alia*, in order to verify the veracity of accusations relating to reckless credit lending.

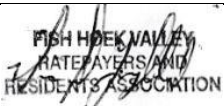
Sources

<http://debtfreedigi.co.za/wp-content/uploads/2017/11/Draft-NCA-Amendment-Bill-2018-for-public-comment.pdf>

<http://www.justice.gov.za/mc/vnbp/act2005-034.pdf>

<http://www.justice.gov.za/legislation/acts/1936-024.pdf>

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