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

AIDS HELPLINE: 0800-0123-22 Prevention is the cure

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.

INCAZELO EFINGQIWE EJWAYELEKILE:

[ ]	Amagama abhalwe ngokugqamile akubakaki abayizikwele amele okukhishiwe emithethweni esebenzayo.
______	Amagama adwetshelwe ngomugqa onganqanyuliwe amele okufakiwe emithethweni esebenzayo.

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

UMTHETHO

Ukuchitshiyelwa koMthetho weziKweletu kaZwelonke, 2005, ukuze uhlinzekele ukusiza ngesikweletu; ukufaka izincazelo ezintsha; ukufaka ukubuyekezwa nokudluliselwa kwezicelo zokusizwa ngesikweletu njengomsebenzi woMlawuli weziKweletu kuZwelonke kanye nokuhlinzekela ukuhlonyiswa kwehhovisi lokuLawula iziKweletu kuZwelonke kanye nezinhlelo ezizolandelwa ekwenzeni lo msebenzi; ukufaka ukubhekwa kokudluliswayo njengomsebenzi weNkantolo yamacala ezikweletu; ukuhlinzekela ukugcinwa kolwazi olumayelana nokusizwa ngesikweletu; ukudinga ukuthi umeluleki wesikweletu kube nguye ophenya ngokuthi isivumelwano sinobudedengu noma cha; ukuhlinzekela ukuthi inkantolo ikwazi ukuphenya noma idlulise udaba lokungenelela esikweletini noma ikhiphe umyalelo omayelana nokungenelela esikweletini; ukuhlinzekela ukuthi iNkantolo kaMantshi neNkantolo yamacala kube yiyo enquma ngokuthi inzalo, izimali noma ezinye izinhlawulo zingafinyelela kumalini uma sekuhlelwa kabusha isikweletu kanjalo nokukhishwa kwesiqondiso mayelana nalokhu; ukuhlinzekela isicelo sokungenelela esikweletini kanye nokuhlola okuhambisana nalokho; ukuhlinzekela ukuthi iNkantolo yamacala ezikweletu ihlele kabusha izibophezelo zekhasimende bese ikhipha umyalelo mayelana nesivumelwano sesikweletu esingekho emthethweni; ukuhlinzekela imiyalelo emayelana nokungenelela esikweletini kanye nokulungiswa kwesimo sezikweletu mayelana nomyalelo onjalo; ukuhlinzekela umshwalense owumgomo wesikhathi sesikweletu; ukuhlinzekela amacala ahlobene nokungenelela esikweletini, izindlela zokusebenza ngesikweletu ezingavumelekile, ukudayisa noma ukuqoqwa kwesikweletu esibekiwe kanye nokuhluleka ukubhalisa okuhambisana nalokhu okuyisidingo soMthetho; ukuhlinzekela izinyathelo ezizothathwa uma icala lenziwe umuntu ongeyena umuntu ongenalo ulwazi lwezomthetho; ukuhlinzekela izinhlawulo ngokwamacala amasha asanda ukwenziwa; ukuhlinzekela ukuthi iNkantolo yamacala ezikweletu iguqule noma ihoxise umyalelo ngaphansi kwezimo ezithile; ukudinga ukuthi uNgqongqoshe enze izimiso mayelana nezinhlelo zokufundisa ngezimali; ukuhlinzekela ukuhlinzeka kwesikhashana sokusetshenziswa kwalo Mthetho oChitshiyelwe ezivumelwaneni zezikweletu okungenwe kuzo ngaphambi kokuthi uqale ukusebenza; kanye nokuhlinzekela ngezindaba ezihambisana nalokhu.

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;'';

ISANDULELA

NJENGOBA inhloso yoMthetho kaZwelonke weziKweletu, 2005 (uMthetho Nombolo 34 wezi-2005), kungukugqugquzela nokuthuthukisa inhlalakahle nomnotho wabantu baseNingizimu Afrika; ukukhuthaza imakethe yemboni enobulungiswa, esobala, encintisanayo, esimeme, enesibopho, ephumelelayo, esebenzayo nokukwaziyo ukungena kuyo; kanye nokuvikela amakhasimende;

FUTHI NJENGOBA kukhona izinhlobo zabathengi abangakwazi ukuthola izinhlelo ezikhona zokusiza umuntu ocwile ezikweletini, okungaba kungenxa yokuthi lezi zinhlelo zigxile ekusebenzeleni abahlinzeki besikweletu, noma ezindlekweni eziba khona ngenxa yezinhlelo ezibandakanyekayo ngalowo muntu ocwile ezikweletini;

FUTHI NALAPHO kungukuthi uma zingekho ezinye izinhlelo zokusiza umuntu ocwile ezikweletini ezifanele kulabo abacwile ezikweletini abangenayo imali eyanele engenayo noma abangenayo impahla engaba inzuzo kwabakweletisayo, abangakwazi ukumelana nezindleko zomyalelo wenkantolo, noma ukuba ikhasimende elingenza inzuzo koweluleka ngesikweletu, akuyona nje inselelo kuphela kubo ukuba baphathe noma benze ngcono ngasesimweni sezimali, kodwa kuphinde kubange ukucwasana okungenabulungiswa kwezenhlalakahle nezomnotho;

FUTHI NJENGOBA kumele kufezeke inhloso yoMthetho kaZwelonke weziKweletu, 2005 (uMthetho Nombolo 34 wezi-2005), wonke amakhasimende kumele avikeleke ngezinqubo ezinobulungiswa, ezisobala, ezisimeme kanye nezinesibopho,

NGALOKHO UZOMISWA yiPhalamende leRiphabhulikhi yaseNingizimu Afrika, ngale ndlela elandelayo:—

Ukuchitshiyelwa kwesigaba 1 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 1 soMthetho 19 wezi-2014

1. Isigaba 1 soMthetho kaZwelonke weziKweletu, 2005 (okulandela lapha ozobizwa ngoMthethongqangi), sichitshiyelwe—

(a) ngokufaka le ncazelo elandelayo emva kwencazelo yegama elithi ''ulwazi oluyimfihlo'':

'' **'UMthethosisekelo'** kuchaza uMthethosisekelo weRiphabhulikhi yaseNingizimu Afrika, 1996;'';

(b) ngokufaka le ncazelo elandelayo emva kwencazelo yegama elithi ''ukusebenzisana ngesikweletu'':

'' **'ukusizwa ngesikweletu'** kuchaza isinyathelo njengokusho kwesigaba 86A, esihlose ukusiza abathengi abahlonziwe lawo angakwazi ukuthola izinyathelo ezikhona zokusiza abacwile esikweletini;

'umfakisicelo sokusizwa ngesikweletu' kuchaza umuntu, noma abantu abangabanikazi bempahla ehlanganisile, labo ngosuku lokuthunyelwa kwesicelo sokusizwa ngesikweletu esisesigabeni 86A ebe—

(a) umthengi ngaphansi kwezivumelwano zesikweletu ezingavikelwe, amathransekushini esikweletu sesikhathi esifishane angavikelwe noma izikweletu ezingavikelwe kuphela;

(b) engenamholo ongenayo, noma uma yena noma empahleni ehlanganisile, kukhona imali engenayo noma enelungelo lokuthola imali engenayo, kungakhathaleki ukuthi ivela kumuphi umthombo, ifika kangaki noma ivame kangakanani ukufika leyo mali engenayo, uma leyo mali engenayo uma ingekakhishwa intela ingadluli ku-R7500 ngaphambi kosuku lokufaka isicelo sokusizwa ngesikweletu, noma lelo nani elinganqunywa isigaba se-171(2A)*(a)*, ngenyanga;

(c) ecwile esikweletini, okungaba ingenxa yezinguquko ezimweni zempilo yomuntu ezifana nokudilizwa emsebenzini, ukushona komuntu owondlayo, noma ezinye izimo; futhi

(d) engadleliwe impahla noma engekho ngaphansi komyalelo wenkantolo;'';

(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—

(c) ngokufaka lezi zincazelo ezilandelayo emva kwencazelo ''inkantolo yokulingana'':

'' **'ukucisha'** kusho, ukuhlangula umuntu ezikweletini njengoba kuhlinzekelwe ngokukhethekile kulo Mthetho,—

(a) ukumiswa kwawo wonke amalungelo aphathelene, noma awumphumela wesivumelwano sesikweletu; kanye

(b) nokumiswa kwanoma yimaphi amalungelo noma izibophezelo ezingaba khona emthethweni, okungaba ngokwezomthetho noma okunye, ngenxa yokumiswa okushiwo endimeni *(a)*,

okuzokwenzeka kusukela ngosuku umthetho wokucima ozoqala ngalo ukusebenza;

'Ukufundisa ngezimali' kusho ulwazi, ikhono kanye nethuba lokuthatha izinqumo eziphusile ngokuphathwa kwemali;'';

(d) ngokufakwa kwencazelo elandelayo emva kwencazelo ''umuntu onegunya'':

'' **'azi'** noma **'ngokwazi'**, uma lisetshenziswe lapho kukhulunywa ngomuntu, futhi odabeni oluthile, kusho ukuthi lowo muntu kungaba ukuthi—

(a) ube nolwazi oluthile mayelana nalolo daba; noma

(b) ubengumuntu obekulindeleke ukuthi kufanele ngabe—

(i) ube nalo ulwazi;

(ii) uluphenyile udaba kwaze kwaba ukuthi uhlinzeka umuntu ngolwazi olufanele; noma

(iii) uthathe ezinye izinyathelo, okuthi uma zithathiwe, ziholele ekutheni ngabe ukwazile ukuhlinzeka umuntu ngolwazi oluthile mayelana nodaba lolo;'';

(e) ngokufakwa kwencazelo elandelayo emva kwencazelo ethi ''isivumelwano sesikweletu sendlu'':

'' **'IsiShayamthetho sikaZwelonke'** kusho iNdlu yePhalamende okukhulunywa ngayo esigabeni 42(1)(a) soMthethosisekelo;''; kanye

(f) nokufakwa kwencazelo elandelayo emva kwencazelo ethi ''lo Mthetho'':

'' **'inani eliphelele lesikweletu esingavikelwe'** kusho inani eliphelele lezikweletu zokuqala zalowo ofaka isicelo sokusizwa ngesikweletu ngaphansi kwezivumelwano zesikweletu esingavikelwe, amathranse-kushini ezikweletu esingavikelwe zesikhathi esifishane noma ezindaweni zezikweletu esingavikelwe lapho ofaka isicelo sokusizwa ngesikweletu eyingxenye yaso;''.

Ukuchitshiyelwa kwesigaba 3 soMthetho 34 wezi-2005

2. Isigaba 3 soMthethongqangi sichitshiyelwe ngokufakwa kwale ndima elandelayo emva kwendima *(g)* :

''*(g*A*)* ukuhlinzeka ngezindlela ezifanele zokusizwa ngesikweletu kulabo bathengi abafanelekayo;''.

Ukufakwa kwesigaba 15A soMthetho 34 wezi-2005

3. Lesi sigaba esilandelayo sifakwe emva kwesigaba 15 soMthethongqangi:

''**Eminye imisebenzi yoMlawuli weziKweletu kuZwelonke**

15A. (1) UMlawuli weziKweletu kuZwelonke kumele alekelele lowo ofaka isicelo sokusizwa ngesikweletu—

(a) ngenqubo ezoqinisekisa ukuthi ucwile ezikweletini;

(b) ngokuhlelwa kabusha kwezibophezelo zakhe noma izibophezelo zempahla ehlanganisile;

(c) ngokuthi isicelo sokungenelela esikweletini sibhekwe ngokwesi-nqumo esishiwo esigabeni 87A; noma

(d) ngokuthi iNkantolo yamacala ezikweletu ibheke isicelo sakhe sokulungiswa kwesimo sezikweletu esishiwo esigabeni sama-88B.

(2) ngokwenza ukuthi uMlawuli weziKweletu kuZwelonke alekelele lowo ofaka isicelo sokusizwa ngesikweletu njengoba kushiwo esigatsha-neni (1), uMphathi oMkhulu weHhovisi noma umsebenzi ogunyazwe nguMphathi oMkhulu weHhovisi—

(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

(a) angaqoka namuphi umsebenzi osebenzela ihhovisi lokuLawula iziKweletu kuZwelonke, noma namuphi umuntu ofanele osebenzela uMbuso, ukuthi abe umsebenzi wehhovisi lokusizwa ngesikweletu; futhi

(b) kumele anike lowo nalowo muntu osebenza ehhovisi lokusizwa ngesikweletu isitifiketi esishoyo ukuthi lowo muntu uqokwe njengomuntu osebenza ehhovisi lokusizwa ngezikweletu kanti ngalokho kumele kube ukuthi ubhalisiwe njengomeluleki wezikweletu, njengokusho kwesigaba sama-44, ngenhloso yokwenza imisebenzi eshiwo esigatshaneni (1) kuphela.''.

Ukuchitshiyelwa kwesigaba 27 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 121 soMthetho 68 wezi-2008

4. Isigaba 27 soMthethongqangi sichitshiyelwe ngokufaka endaweni yendima *(a)* indinyana (i) yendinyana elandelayo:

''(i) isicelo noma ukudluliswa okungenziwa ngokwalo Mthetho, nokwenza isinqumo esihlinzekelwa kulo Mthetho mayelana nalesi sicelo noma ukudluliswa; noma''.

Ukuchitshiyelwa kwesigaba 60 soMthetho 34 wezi-2005

5. Isigaba 60 soMthethongqangi lapha sichitshiyelwa ngokufaka endaweni yalesi sigatshana esilandelayo kwesigatshana (1):

''(1) **[Konke]** Ukuhlangula umuntu ocwile ezikweletini njengoba kuhlinzekelwe kulo Mthetho, wonke umuntu omdala, kanye nawo wonke umuntu onegunya noma izinhlangano zabantu, unelungelo lokufaka isicelo sesikweletu kumhlinzeki wezikweletu.''.

Ukufakwa kwesigaba 69A eMthethweni 34 wezi-2005

6. Isigaba esilandelayo sifakwe emva kwesigaba sama-69 soMthethongqangi:

''**Irekhodi likaZwelonke lokusizwa ngezikweletu**

69A. (1) UMlawuli weziKweletu kuZwelonke kumele agcine irekhodi lezicelo zokusizwa ngesikweletu njengokusho kwesigaba 86A, isimo saleso sicelo kanye nazo zonke izinqumo zenkantolo ezikhishwe mayelana nalezo zicelo.

(2) Irekhodi elimayelana nokusizwa ngesikweletu lingashicilelwa ngokutholakala kwemvume kulowo ofake isicelo sokusizwa ngesikweletu, noma njengoba kudingeka ngokwalo Mthetho noma namuphi omunye umthetho osebenzayo.

(3) UNgqongqoshe, ngokuhambisana nesigaba 171, anganquma ukuthi yiluphi ulwazi olungabhalwa kurekhodi elishiwo esigatshaneni (1).''.

Ukuchitshiyelwa kwesigaba 70 soMthetho 34 wezi-2005

7. Isigaba 70 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana (1) sendima *(a)* le ndima elandelayo:

''*(a)* umlando womuntu ngesikweletu, kubandakanya izicelo zesikweletu, nezivumelwano lapho umuntu eyingxenye noma kade eyingxenye yazo, umkhuba wokukhokha noma ukungakhokhi kulezi zivumelwano zesikweletu, ukuhlelwa kabusha kwesikweletu ngokwalo Mthetho, izigameko zokuphoqelela mayelana nalesi sivumelwano esinjalo, izimo zokumiswa kwesivumelwano sesikweletu, ukufaka isicelo sokusizwa ngesikweletu, isimo kanye nemiyalelo/izinqumo zenkantolo ezikhishwe mayelana nokungenelela esikweletini, kanye nezindaba ezifana nalokho;''; kanye

(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;

(b) nokufakwa kwendima elandelayo esigatshaneni (2) emva kwendima *(a)*:

"*(a*A*)* ukwamukela ngaphandle kwenhlawulo ukufakwa kolwazi lwezikweletu zabathengi olusuka kuMlawuli weziKweletu kuZwelonke olumayelana nesicelo sokusizwa ngesikweletu, isimo saleso sicelo kanye naziphi izinqumo/imiyalelo ezikhishwe mayelana nalesi sicelo;".

Ukuchitshiyelwa kwesigaba 71 soMthetho 34 wezi-2005 njengoba uchitshiyelwe ngesigaba 21 soMthetho 19 wezi-2014

8. Isigaba 71 soMthethongqangi sichitshiyelwe—

(a) ngokufakwa kwesigatshana esilandelayo emva kwesigatshana (1):

"(1A) Ofaka isicelo sokusizwa ngesikweletu onezikweletu ezihlelwe kabusha ngokweNgxenye D yalesi Sahluko, kumele anikwe isitifiketi esimvumelayo ukwenza lokho esikhishwa uMlawuli weziKweletu kuZwelonke ezinsukwini eziyisikhombisa zokusebenza emva kokuthi ofaka isicelo sokusizwa ngesikweletu—

(a) efezekise zonke izibophezelo ngaphansi kwesivumelwano esasingaphansi komyalelo/kwesinqumo noma isivumelwano sokuhlelwa kabusha kwesikweletu, ngokuhambisana naleso sinqumo senkantolo noma kwesivumelwano; noma

(b) kuboniswe njengoba kunqunyiwe—

(i) ukukwazi ukumelana nezibophezelo zezimali esikhathini esizayo ngokomyalelo/kwesinqumo senkantolo sokuhlelwa kabusha; noma

(ii) ukuthi akukho mali esilele emuva engakhokhiwe ezivumelwaneni zokuhlela kabusha okushiwo endinyaneni (i); futhi

(iii) zonke izibophezelo ngaphansi kwesivumelwano sesikweletu esifakiwe emyalelweni/esinqumweni noma esivumelwaneni sokuhlela kabusha, ngaphandle kwalezi ezishiwo endinyaneni (i),

sezikhokhwe zaphelela, futhi uMlawuli weziKweletu kuZwelonke kumele athumele ikhophi yesitifiketi esikuvumelayo ukwenza lokhu kuwo wonke amahhovisi abhalisiwe abhekele izindaba zezikweletu ama-credit bureau."; kanye

(b) nangokufakwa kwesigatshana esilandelayo emva kwesigatshana (3):

"(3A) Uma uMlawuli weziKweletu kuZwelonke enquma ukungasikhiphi noma ehluleka ukukhipha isitifiketi esikuvumelayo njengokusho kwesigatshana (1A), noma ehluleka ukuthumela ikhophi kuwo wonke amahhovisi abhalisiwe abhekele izikweletu ama-credit bureau, ofaka isicelo sokusizwa ngesikweletu angafaka isicelo sokuthi iNkantolo yamacala ezikweletu isibuyekeze leso sinqumo noma lokho kwehluleka ukukhipha isitifiketi, kanti futhi uma iNkantolo yamacala ezikweletu yanelisekile ukuthi ngempela ofaka isicelo sokusizwa ngesikweletu ufanelekile ukuthola isitifiketi ngokwesigatshana (1A), iNkantolo yamacala ezikweletu ingayalela uMlawuli weziKweletu kuZwelonke ukuthi—

(a) anike ofaka isicelo sokusizwa ngesikweletu isitifiketi esimvumelayo; noma

(b) athumele ikhophi kuwo wonke amahhovisi abhalisiwe abhekele izikweletu, ama-credit bureau.".

Ukuchitshiyelwa kwesigaba 71A soMthetho 34 wezi-2005, njengoba ufakwe yisigaba 22 soMthetho 19 wezi-2014

9. Isigaba 71A soMthethongqangi sichitshiyelwe ngokufakwa kwezigatshana ezilandelayo emva kwesigatshana (3):

"(3A) UMlawuli weziKweletu kuZwelonke kumele athumele ubufakazi balezi zinqumo noma imiyalelo yenkantolo elandelayo, kanjalo nosuku lokuphela kokumiswa noma kwemikhawulo, lapho kufanele khona, kuye ehhovisi lezikweletu, i-credit bureau, ezinsukwini ezimbili zokusebenza sithathiwe leso sinqumo noma uphumile lowo myalelo wenkantolo:

(a) isaziso sokuchithwa kwesicelo sokusizwa ngesikweletu esikhishwa uMlawuli weziKweletu kuZwelonke noma iNkantolo yamacala ezikweletu;

(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);

(b) umyalelo wokumisa okhishwe ngokwesigaba 87A(2)*(b)*(i), kanjalo nokwelulwa komyalelo wenkantolo;

(c) umyalelo obeka imikhawulo yamalungelo abathengi ngaphansi kwesigaba 60 njengokusho kwesigaba 87A(8); noma

(d) umyalelo wokuhlunyeleliswa njengokusho kwesigaba 88B(7).

(3B) Ihhovisi elibhekele izikweletu, i-credit bureau, kumele lisuse uhla olumayelana nokusizwa ngesikweletu ezinsukwini eziyisikhombisa kusukela ngosuku lokuthola ubufakazi besinqumo esishiwo esigatshaneni (3A)*(a)*; noma njengoba izosebenza kusukela ngalolo suku—

(a) olubekwe uMlawuli weziKweletu kuZwelonke njengosuku okuphela ngalo ukumiswa kwesikhashana njengokusho kwesigatshana (3A)*(b)*, ngaphandle uma uMlawuli weziKweletu kuZwelonke ethumele obunye ubufakazi balokhu—

(i) bokwelulwa komyalelo wenkantolo njengokusho kwesigaba 87A(2)*(b)*(i); noma

(ii) ukuphoqelelwa komkhawulo oshiwo esigabeni 87A(8); noma

(b) olubekwe uMlawuli weziKweletu kuZwelonke njengosuku okuphela ngalo imikhawulo eshiwo esigatshaneni (3A)*(c)*,

noma yiluphi oluwusuku olufika kamuva.

(3C) Naphezu kwesigatshana (3B) ihhovisi elibhekele izikweletu, i-credit bureau, kumele lisuse uhlu oluhambisana nokusizwa ngesikweletu ezinsukwini eziyisikhombisa ukusukela ngosuku lokuthola ubufakazi bomyalelo wokulungisa isimo sezikweletu oshiwo esigabeni 88B(7).

(3D) Uma kwenzeka umhlinzeki wesikweletu noma ofaka isicelo sokusizwa ngesikweletu eluphika ulwazi oluthunyelwe uMlawuli weziKweletu kuZwelonke ngokwesigatshana (3A), lowo mhlinzeki wesikweletu noma ofaka isicelo sokusizwa ngesikweletu angafaka isicelo eNkantolo yamacala ezikweletu ukuthi isombulule lolo lwazi oluphikwayo okuyothi uma iNkantolo yamacala ezikweletu yaneliseka ukuthi ulwazi luyiphutha, iNkantolo yamacala ezikweletu ingakhipha umyalelo ofanele ukuze kulungiswe ulwazi oluholele kulokho kungezwani.

(3E) Wonke umhlinzeki wesikweletu othintekayo yilo myalelo oshiwo esigabeni 87(1A) noma 87A kumele, ezinsukwini eziyisikhombisa zokusebenza kusukela ngosuku umhlinzeki wesikweletu athola ngalo umyalelo wenkantolo, achibiyele isivumelwano sesikweletu okukhulunywa ngaso ngokuhambisana nalowo myalelo wenkantolo bese ethumela ulwazi oluchitshiyelwe lwesikweletu somthengi ehhovisi elibhekele izikweletu, i-credit bureau, ngendlela enqunyiwe efanele.''.

Ukufakwa kwesigaba 82A eMthethweni 34 wezi-2005

10. Lesi sigaba esilandelayo sifakwe emva kwesigaba 82 soMthethongqangi:

''**Ukubikwa nokuphenywa kwesivumelwano sesikweletu esibudedengu**

82A. (1) Uma ngesikhathi sokuhlola esishiwo esigabeni 86(6) kukhona izinsolo ezibambekayo zokuthi isivumelwano sesikweletu esifakwe kulokho kuhlolwa siyisivumelwano sesikweletu esibudedengu, umeluleki wezikweletu kumele asibike leso sivumelwano sesikweletu esibudedengu—

(a) kuMlawuli weziKweletu kuZwelonke lapho umeluleki wesikweletu echitha isicelo njengoba kushiwo esigabeni 86(7)*(a)* noma enze izincomo njengokusho kwesigaba 86(7)*(b)*; noma

(b) eNkantolo kaMantshi lapho umeluleki wesikweletu enze isincomo esishiwo esigabeni 86(7)*(c)*.

(2) Umhlinzeki wesikweletu kumele, ezinsukwini eziyisikhombisa zokusebenza emva kokuthola isicelo futhi akhokhise imali engadluli emalini enqunyiwe, ahlinzeke umeluleki wesikweletu nganoma yiluphi ulwazi olulandelayo oluceliwe olumayelana nomthengi okukhulunywa ngaye:

(a) Isicelo esifanele sesikweletu;

(b) isitatimende sangaphambi kwesivumelwano;

(c) isilinganiso sesikweletu;

(d) isivumelwano sesikweletu umthengi angene kuso;

(e) amadokhumenti eseka izinyathelo ezithathiwe ngokwesigaba 81(2);

(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

(f) amarekhodi ezimali ezikhokhiwe; kanye

(g) namadokhumenti eseka naziphi izinyathelo ezithathiwe emva kokuthi ikhasimende lephule isivumelwano.

(3) Umbiko oya kuMlawuli weziKweletu kuZwelonke oshiwo esigatshaneni (1)*(a)* uthathwa njengesikhalazo ngokwesigaba 136 kanti futhi uMlawuli weziKweletu kuZwelonke kumele aphenye ukuthi umbiko lowo uhambisana nesigaba 139.

(4) INkantolo yamacala ezikweletu ingakhipha umyalelo wenhlawulo oshiwo esigabeni 151 lapho umhlinzeki wesikweletu ehluleke ngenhloso ukuthobela isigatshana (2).''.

Okufakwe esikhundleni sesigaba 85 soMthetho 34 wezi-2005

11. Lesi sigaba esilandelayo sifakwe esikhundleni sesigaba 85 soMthethongqangi:

''**Inkantolo ingamemezela futhi ikhulule abacwile ezikweletini**

85. Nakuba kukhona okuhlinzekelwa umthetho noma isivumelwano esiphambene nalokho, kunoma yiziphi izinqubo zenkantolo lapho kubhekwa khona isivumelwano senkantolo, uma kusolwa noma inkantolo ibona ukuthi ikhasimende elingaphansi kwesivumelwano sesikweletu licwile ezikweletini, inkantolo ingenza lokhu—

(a) idlulisele udaba luye ngqo kumeluleki wezikweletu nesicelo esicela umeluleki wezikweletu ukuthi ahlole izimo zomthengi bese enza izincomo enkantolo ngokwesigaba 86(7); **[noma]**

(b) imemezele ukuthi umthengi ucwile ezikweletini, okutholakale ngokwale Ngxenye, bese enza namuphi umyalelo oshiwo esigabeni 87 ukuze kukhululwe umthengi kulokho kucwila esikweletini; noma

(c) lapho umthengi efaneleka ukuthi kungenelelwe esikweletini, ithole ukuthi umthengi uyafisa yini ukuba yingxenye yokusizwa ngesikweletu kuyothi uma umthengi eqinisekisa bese—

(i) idlulisele udaba kuMlawuli weziKweletu kuZwelonke ukuze lubhekwe; noma

(ii) lapho inkantolo inolwazi olwanele ukwenza kanjalo, ibheke udaba bese ikhipha umyalelo oshiwo esigabeni 87(1A) noma 87A.''.

Ukuchitshiyelwa kwesigaba 86 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 26 soMthetho 19 wezi-2014

12. Isigaba 86 soMthethongqangi sichitshiyelwe—

(a) ngokufakwa esikhundleni sendima *(b)* yesigatshana (6) le ndima elandelayo:

''*(b)* **[uma umthengi efuna isimemezelo sesikweletu esibudedengu,]** noma kukhona ezivumelwaneni zesikweletu zomthengi ezibonakala zibudedengu.''; kanye

(b) ngokususwa kwegama elithi ''noma'' emva kwendinyana *(cc)* esigatshaneni (7)*(c)*(ii) bese kufakwa le ndinyana elandelayo emva kwaleyo ndinyana:

''*(cc*A) ukunquma inzalo, izindleko noma ezinye izinhlawulo ukuthi zingagcina kumalini njengokusho kwesigaba 101(1)*(e)*, ngaphansi kwesivumelwano sesikweletu, esingagcina kokungekho, ngesikhathi iNkantolo kaMantshi engakubona kufanele futhi kulungile kodwa kungadluli esikhathini esishiwo esigabeni 86A(6)*(d)*; noma''.

Ukufakwa kwesigaba 86A eMthethweni 34 wezi-2005

13. Lesi sigaba esilandelayo sifakwe emva kwesigaba 86 soMthethongqangi:

''**Isicelo sokusizwa ngesikweletu**

86A. (1) Ofaka isicelo sokusizwa ngesikweletu angafaka isicelo kuMlawuli weziKweletu kuZwelonke ngendlela enqunyiwe efanele ukuze lowo ofaka isicelo sokusizwa ngesikweletu amenyezelwe njengocwile

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.

ezikweletini, uma lowo ofaka isicelo sokusizwa ngesikweletu enesamba sesikweletu esingaphelile asikweleta abahlinzeki besikweletu esingekho ngaphezu kwama-R50,000, noma leli nani elinganqunywa esigabeni 171(2A)*(b)*.

(2) Lezi zivumelwano zesikweletu ezilandelayo eziyingxenye yesamba sesikweletu esingaphelile, azingeni ngaphansi kokusizwa ngesikweletu:

(a) isivumelwano sesikweletu sokuzithuthukisa esishiwo esigabeni 10; kanye

(b) ngaphansi kwesigaba 85*(c)*, nasiphi isikweletu lapho, ngesikhathi sokufakwa kwesicelo sokusizwa ngesikweletu, umhlinzeki ngaphansi kwaleso sivumelwano sesikweletu ubesethathe izinyathelo ezishiwo esigabeni se-130 ukuze asebenzise isivumelwano.

(3) Uma kungena isicelo esishiwo esigatshaneni (1), uMlawuli weziKweletu kuZwelonke kumele athobele isigaba sama-86(4) kanye nesesi-(6), ngokwenza izinguquko ezifanele.

(4) Ofaka isicelo sokusizwa ngesikweletu, lowo nalowo mhlinzeki wesikweletu osohlwini lwesicelo sokungenelela esikweletini, kumele athobele isigaba 86(5), ngokwenza izinguquko ezifanele.

(5) UMlawuli weziKweletu kuZwelonke kumele, ngenkathi ebheka isicelo esishiwo esigatshaneni (1), ahlinzeke ofaka isicelo sokusizwa ngesikweletu ngalokhu—

(a) ukwelulekwa nokufundiswa ngezimali; kanye

(b) nokuthola ukuqeqeshwa ukuze kuthuthuke ulwazi lwezimali lwalowo ofaka isicelo sokusizwa ngesikweletu.

(6) Uma uMlawuli weziKweletu kuZwelonke ngenxa yokuhlolwo okushiwo esigatshaneni (3) enquma ukuthi—

(a) ofaka isicelo sokungenelela esikweletini akafanele ukusizwa ngesikweletu, uMlawuli weziKweletu kuZwelonke kumele asichithe isicelo;

(b) ofaka isicelo sokusizwa ngesikweletu akafanele ukusizwa ngesikweletu, kodwa kunjalo ubhekene nokungakwazi, noma angase angakwazi, ukukhokhela zonke izibophezelo zezikweletu ezingaphansi kwezivumelwano zesikweletu zofaka isicelo sokusizwa ngesikweletu ngesikhathi esifanele, uMlawuli weziKweletu kuZwelonke kumele enze isincomo esithi lowo ofaka isicelo sokusizwa ngesikweletu kanye nabahlinzeki besikweletu abathintekayo kumele bazikhethele futhi bavumelane ngohlelo lokuhlela kabusha isikweletu;

(c) isivumelwano sesikweletu esiyingxenye yesicelo singaba ngaphansi kokubolekisa okubudedengu, isivumelwano sesikweletu esingekho emthethweni noma isivumelwano sesikweletu okungenwe kuso ngendlela engavumelekile, uMlawuli weziKweletu kuZwelonke angadlulisela isivumelwano sesikweletu eNkantolo yamacala ezikweletu ukuze kukhishwe isimemezelo esiyiso;

(d) ofaka isicelo sokusizwa ngesikweletu ufanelekile ukuthola ukusizwa ngesikweletu, nokuthi izibophezelo zofaka isicelo sokusizwa ngesikweletu zingahlelwa kabusha esikhathini esiyiminyaka emihlanu noma esikhathini eside esingabe sinqunyiwe, uMlawuli weziKweletu kuZwelonke kumele adlulisele udaba nesincomo eNkantolo yamacala ezikweletu ngendlela enqunyiwe efanele ukuze kukhishwe umyalelo oshiwo esigabeni 87(1A); noma

(e) ofaka isicelo sokusizwa ngesikweletu ufaneleka ukuthola ukusizwa ngesikweletu, kodwa imali engenayo kanye nezimpahla zofaka isicelo sokusizwa ngesikweletu azanele ukuvumela izibopho zofaka isicelo sokusizwa ngesikweletu ukuthi zihlelwe kabusha ngesikhathi esishiwo endimeni *(d)*, uMlawuli weziKweletu kuZwelonke kumele adlulise udaba nesincomo siye eNkantolo yamacala ezikweletu ngendlela enqunyiwe ukuze kukhishwe umyalelo oshiwo esigabeni 87A.

(7) Uma uMlawuli weziKweletu kuZwelonke echitha isicelo esishiwo esigatshaneni (6)*(a)*, ofaka isicelo sokungenelela esikweletini, esingafaki iNkantolo kaMantshi, angafaka isicelo siye ngqo eNkantolo kaMantshi, ngendlela enqunyiwe, ukuze athole umyalelo oshiwo esigabeni 87.

(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;

(8) Uma uMlawuli weziKweletu kuZwelonke enza isincomo ngokwesigatshana (6)*(b)*, bese ofaka isicelo sokusizwa ngesikweletu kanye—

(a) nomhlinzeki ngamunye othintekayo amukela isiphakamiso, uMlawuli weziKweletu kuZwelonke kumele athobele isigaba 86(8)*(a)* ngokwenza izinguquko ezifanele; noma

(b) umhlinzeki wesikweletu othintekayo engasemukelanga isiphakamiso, uMlawuli weziKweletu kuZwelonke kumele adlulisele udaba eNkantolo yamacala ezikweletu nezincomo.

(9) *(a)* Uma uMlawuli weziKweletu kuZwelonke edlulisela isicelo sokusizwa ngesikweletu ngokwesigatshana (6)*(e)*, uMlawuli weziKweletu kuZwelonke kumele azise umhlinzeki wesikweletu ngamunye osohlwini lwesicelo sokusizwa ngesikweletu ngalokhu kudluliswa kodaba bese ecela labo bahlinzeki ukuthi bavele phambi kweNkantolo yamacala ezikweletu ngosuku olubekiwe.

(b) Umhlinzeki wesikweletu oshiwo endimeni *(a)* angathumela isiphakamiso esibhaliwe eNkantolo yamacala ezikweletu ngendlela enqunyiwe, ngosuku noma ngaphambi kosuku olubekiwe.

(10) *(a)* Uma ofaka isicelo sokusizwa ngesikweletu ephule isivumelwano ngaphansi kwesivumelwano sesikweletu esiyingxenye yesicelo sokusizwa ngesikweletu ngokwalesi sigaba, umhlinzeki wesikweletu, emva kwesikhathi esinqunyiwe, mayelana naleso sivumelwano, angafaka isaziso sokumisa ukusizwa ngesikweletu ngendlela enqunyiwe asiyise—

(i) kofaka isicelo sokusizwa ngesikweletu; kanye

(ii) noMlawuli wesiKweletu kuZwelonke.

(b) Akekho umhlinzeki wesikweletu ongamisa isicelo sokusizwa ngesikweletu esifakwe ngokwalo Mthetho, uma isicelo esinjalo sokusizwa ngesikweletu bese sifakiwe vele eNkantolo yamacala ezikweletu.

(11) Uma umhlinzeki wesikweletu ofake isaziso sokumisa ukusizwa ngesikweletu njengoba kushiwo esigatshaneni (10) eqhubeka nokusebenzisa leso sivumelwano ngokweNgxenye C yeSahluko 6, inkantolo noma iNkantolo yamacala ezikweletu elalele lelo cala ingayalela ukuthi ukusizwa ngesikweletu kuqhubeke ngaphansi kwanoma yimiphi imibandela inkantolo noma iNkantolo yamacala ezikweletu ekubona kuyizimo ezifanele kwenziwe lokho.

(12) *(a)* Isigatshana (6)*(e)* sisebenza isikhathi esiyizinyanga ezingama-48 ukusukela ngosuku esisebenza ngalo.

(b) UNgqongqoshe kumele abukeze umthelela wesigaba 87A futhi kumele, zingakadluli izinyanga ezingu-36 emva kokusebenza kwesigatshana (6) *(e)*, alethe umbiko esiGungwini sikaZwelonke ozobe unemiphumela yaloko kubukeza.''.

Ukuchitshiyelwa kwesigaba 87 soMthetho 34 wezi-2005

14. Isigaba 87 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesihloko kulesi sihloko esilandelayo:

''**INkantolo kaMantshi noma iNkantolo yamacala ezikweletu ingahlela kabusha izibopho zabathengi**''; kanye

(b) nokufakwa ngemuva kwesigatshana soku- (1) kwezigatshana ezilandelayo:

''(1A) Uma uMlawuli weziKweletu kuZwelonke enza isincomo eNkantolo yamacala ezikweletu ngokwesigaba 86A(6)*(d)*, iNkantolo yamacala ezikweletu noma ilungu leNkantolo yamacala ezikweletu lilodwa ngokuhambisana noMthetho, kufanele kube nomhlangano wokulalelwa kwecala futhi, ngokuya kwesincomo kanye nolunye ulwazi olungaphambi kwalo, nezindlela zezezimali zabathengi, okubhekiwe nezibopho, angahle—

(a) azichithe izincomo noma isicelo, njengoba kungenzeka; noma

(b) enze—

(i) umyalelo omemezela nasiphi isivumelwano sesikweletu esiyingxenye yesicelo njengesiwubudedengu, bese ekhipha isinqumo esishiwo esigabeni 83(2) noma (3), uma iNkantolo yamacala ezikweletu igcina ngokunquma ukuthi isivumelwano siwubudedengu:

(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;

(ii) umyalelo wokuthi isibopho esisodwa noma ngaphezulu sofaka isicelo sokungenelela esikweletini zihlelwe kabusha ngokwenza lokhu—

(aa) kwelulwe isikhathi sesivumelwano nokuncishiswa kwenani lokukhokhwayo ngakunye ngokufanele;

(bb) ukuhlehliswa ngesikhathi esithize esibekiwe izinsuku lapho kufanele kukhokhwe ngazo ngaphansi kwesivumelwano;

(cc) kwelulwe isikhathi sesivumelwano kanye nokuhlehliswa kwesikhathi esithize esibekiwe sezinsuku lapho kufanele ukuthi kukhokhwe ngazo ngaphansi kwesivumelwano;

(dd) ukunquma inzalo enkulu ebekiwe, izimali noma ezinye izinhlawulo ngaphandle kwezinhlawulo ngokusho kwesigaba 101(1)*(e)*, ngaphansi kwesivumelwano sesikweletu, lapho isibalo esinqunyiwe esipheleleyo singenalo inani, ngesikhathi esinjalo njengokuba iNkantolo yamacala ezikweletu ibona kulungile futhi kufanele kodwa kungedluli isikhathi esishiwo esigabeni 86A(6)*(d)*; noma

(ee) ukubala kabusha izibopho zomthengi ngenxa yokwephulwa kweNgxenye A noma-B yeSahluko sesi-5, noma iNgxenye-A yeSahluko sesi-6; noma

(iii) yomibili imiyalelo eshiwo ezindinyaneni (i) kanye no-(ii).

(1B) UMlawuli weziKwelethu kuZwelonke kufanele azise lowo ofake isicelo sokungenelela ezikweletini nganoma yisiphi isinqumo njengokushiwo esigatshaneni (1A), bese ethumela ikhophi yalokho ngendlela enqunyiwe, kubo—

(a) bonke abahlinzeki bezikweletu abasohlwini esicelweni: futhi

(b) nakuwo wonke amahhovisi ezikweletu ama-credit bureau.''.

Ukufakwa kwesigaba 87A eMthethweni 34 wezi-2005

15. Lesi sigaba esilandelayo lapha sifakwa ngemuva kwesigaba 87 soMthethongqangi:

''**Ezinye izinqumo ezimayelana nokusizwa ngesikweletu**

87A. (1) Ukudlulisela okushiwo esigabeni 86A(6)*(e)* kungase kubhekwe yilungu elilodwa leNkantolo yamacala ezikweletu ngendlela enqunyiwe, ngokubheka amadokhumenti afakiwe kwifomu lokwedluliswa elivela kuMlawuli weziKweletu kaZwelonke nanoma yiziphi izethulo ezishiwo esigabeni 86A (9).

(2) INkantolo yamacala ezikweletu ingahle, ngokwengeziwe emandleni ayo ngokwalo Mthetho, emva kokucubungula ulwazi esigatshaneni (1) nanoma yiluphi olunye ulwazi olufanele—

(a) ingakhipha umyalelo wokuthi ofaka isicelo sokusizwa ngesikweletu akafanelekile ukusizwa ngesikweletu bese esichitha isicelo; noma

(b) (i) imise zonke izivumelwano zezikweletu ezifanelekayo, ingxenye yazo noma ngokugcwele, izinyanga eziyi-12, okuyisikhathi esingelulwa ngesinye isikhathi esiyizinyanga eziyi-12, ngokubheka izici ezibaluliwe esigatshaneni (3); futhi

(ii) ifune ukuthi umuntu ofaka isicelo sokusizwa ngesikweletu angenele uhlelo lokufunda ngezezimali.

(3) Lapho kucatshangelwa ukumiswa okuphelele noma ukumiswa kwengxenye yesivumelwano sesikweletu, ukuguqulwa noma ukwelulwa kwalokho kumiswa, noma ukucima sonke noma ingxenye yenani lamanani njengokushiwo esigabeni 101(1) ngaphansi kwesivumelwano esifanelekayo, iNkantolo yamacala ezikweletu kufanele icabangele izinto ezifanele, izinto ezingafaka lokhu okulandelayo:

(a) Noma umuntu ofake isicelo sokungenelela esikweletini—

(i) ukuthi ungumuntu ophila nokukhubazeka, ingane encane eyengamele ikhaya, umuntu wesifazane owengamele ikhaya, noma umuntu osekhulile;

(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).

(ii) wayeke wafaka isicelo sokubukeza isikweletu noma ukudlelwa impahla noma ukuphathelwa izikweletu; noma

(iii) wake wacinyelwa isikweletu ngokomyalelo wenkantolo noma iNkantolo yamacala ezikweletu;

(b) izimo zomuntu ofake isicelo sokusizwa ngesikweletu nanoma yisiphi isenzo noma ukungenzi—

(i) lapho engena esivumelwaneni esivumelekile sesikweletu esenza isikweletu sonke esingaphelile;

(ii) okuholele noma okube nomthelela ekutheni umuntu ofake isicelo sokungenelela esikweletini angabi nayo imali engenayo eyanele noma izimpahla ukuze izibopho zomuntu ofake isicelo sokungenelela esikweletini zikwazi ukuhlelwa kabusha ngesikhathi esishiwo esigabeni 86A(6)*(d)*; noma

(iii) ngumuntu ofake isicelo sokungenelela esikweletini ukuze athole imali engenayo noma ukwengeza imali engenayo; noma

(c) isenzo noma ukushiya umhlinzeki wesikweletu ngamunye othintekayo—

(i) lapho engena esivumelwaneni sesikweletu esifanele; noma

(ii) ngesikhathi senqubo njengokushiwo esigabeni 86A nangesikhathi sezinqubo eziphambi kweNkantolo yamacala ezikweletu.

(4) *(a)* Isigaba 84 sisebenza ekumisweni njengokushiwo esigatshaneni (2)*(b)*(i).

(b) Ngokuya kwesigatshana (6), uma ngabe isigunyaziso ngokuphathelene nesivumelwano sesikweletu esimisiwe sizophothulwa ngaphambi noma, noma ungakapheli unyaka emva kosuku kuphele ukumiswa, isikhathi sesigunyaziso angeke siphele ungakapheli unyaka emva kosuku lokuphelisa ukumiswa.

(5) *(a)* UMlawuli weziKweletu kaZwelonke kumele abuyekeze izimo zomfakisicelo zokusizwa ngesikweletu ezinyangeni eziyisishiyagalombili emva kokukhishwa komyalelo ngokwesigatshana (2)*(b)*, bese enquma ukuthi umuntu ofake isicelo sokusizwa ngesikweletu unemali engenayo eyanele noma izimpahla ukuze izibopho zakhe zikwazi ukuhlelwa kabusha kuleso sikhathi njengokushiwo esigabeni 86A(6)*(d)*.

(b) UMlawuli weziKweletu kaZwelonke kufanele, lapho umuntu ofake isicelo sokusizwa ngesikweletu—

(i) enemali eyanele engenayo noma izimpahla ezivumela ukuthi isibopho sihlelwe kabusha ngesikhathi esishiwo esigabeni 86A(6)*(d)*, adlulise udaba nesincomo eNkantolo yamacala ezikweletu ngendlela enqunyiwe yomyalelo oshiwo kwesigaba 87(1A); noma

(ii) engakabi nayo imali engenayo eyanele noma izimpahla ukuze isibopho sihlelwe kabusha ngesikhathi esishiwo esigabeni 86A(6)*(d)*, adlulisele lolu daba eNkantolo yamacala ezikweletu ukuze kunqunywe ukwelulwa kwesikhathi sokumiswa njengokusho kwesigatshana (2)*(b)*(i).

(c) Uma iNkantolo yamacala ezikweletu iyalela ukwelulwa kwesikhathi sokumiswa, uMlawuli weziKweletu kaZwelonke kufanele asibukeze njengokusho kwendima *(a)* izinyanga eziyisishiyagalombili kweluliwe ukumiswa nalapho umuntu ofake isicelo sokusizwa ngesikweletu ngaleso sikhathi—

(i) enemali engenayo eyanele noma izimpahla ukuze izibopho zikwazi ukuhlelwa kabusha ngesikhathi esibekiwe ngokusho kwesigaba 86A(6)*(d)*, enze isincomo eNkantolo yamacala ezikweletu ngendlela enqunyiwe yomyalelo kukushiwo esigabeni 87(1A); noma

(ii) akakabi nayo imali eyanele engenayo noma izimpahla ukuze izibopho zikwazi ukuhlelwa kabusha ngesikhathi esishiwo esigabeni 86A(6)*(d)*, adlulisele lolu daba eNkantolo yamacala ezikweletu ukuze kubhekwe ukucinywa kwesikweletu sonke noma ingxenye yenani lonke elishiwo esigabeni 101(1) ngaphansi kwaleso naleso sivumelwano esifanelekayo.

(d) Isigaba 86A(9) sisebenza kanye nezinguquko ezifanele lapho uMlawuli weziKweletu kaZwelonke enza ukwedlulisela okushiwo ezindimeni *(b)*(ii) noma *(c)*(ii).

(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;

(6) INkantolo yamacala ezikweletu ingase, ngaphezu kwamanye amandla ayo ngokwalo Mthetho, emva kokubheka —

(a) ukudluliselwa okushiwo esigatshaneni (5)*(c)*(ii);

(b) noma umuntu ofake isicelo sokusizwa ngesikweletu akabi nemali engenayo eyanele noma izimpahla ukuze izibopho zikwazi ukuhlelwa kabusha ngesikhathi esishiwo esigabeni 86A(6)*(d)*; kanye

(c) namaphuzu ashiwo esigatshaneni (3),

futhi ngokulandela isigatshana (7) kanye nesesi-(8), asho isamba samanani esishiwo esigabeni 101(1) ngaphansi kwezivumelwano zezikweletu ezifanelekayo njengokucinywa kwazo.

(7) Ukucinywa okushiwo esigatshaneni (6)—

(a) kungase kube iphesenti lezindleko zamanani njengokusho kwesigaba 101(1) ngaphansi kwesivumelwano esifanelekayo; futhi

(b) kufanele sisebenze ngokulingana kuzo zonke izivumelwano ezifanelekayo.

(8) Uma kukhishwa umyalelo oshiwo esigatshaneni (6) iNkantolo yamacala ezikweletu kufanele ibeke imikhawulo elungelweni lomuntu ofake isicelo sokusizwa ngesikweletu ukuthi afake isicelo sesikweletu esishiwo esigabeni 60 okungenani esikhathini esiyizinyanga eziyisithupha kanti neNkantolo yamacala ezikweletu ingabeka umkhawulo kulelo lungelo elishiwo kuleso sikhathi esengeziwe njengokubonwa yiNkantolo yamacala ezikweletu njengokunobulungisiswa futhi kufanele—

(a) ngokubheka amaphuzu abalulwe esigatshaneni (3) nesesi-(9); futhi

(b) kuncike ezikhathini eziningi ezinqunyiwe okukhulunywa ngazo esigatshaneni (9).

(9) Isikhathi esiphelele sokubekwa komkhawulo elungelweni lomuntu ofake isicelo sokusizwa ngesikweletu lokufaka isicelo sesikweletu ngokusho kwesigatshana (8)*(a)* singeqi izinyanga eziyi-12 futhi uma kunqunywa isikhathi esifanele, la maphuzu alandelayo kufanele abhekwe:

(a) Isikweletu esiphelele esingavikelwe;

(b) inani lezivumelwano ezalethwa ukuze zingenelele izikweletu;

(c) isikhathi sesivumelwano sesikweletu ngasinye esifanele; kanye

(d) nerekhodi lesikweletu lomuntu ofake isicelo sokungenelela isikweletu.

(10) UMlawuli weziKweletu kaZwelonke kufanele azise umuntu ofake isicelo sokusizwa ngesikweletu nganoma yimuphi umyalelo njengokushiwo kulesi sigaba, bese ethumela ikhophi yalokho njengokwesinqumo nendlela eyiyo, kubo—

(a) bonke abahlinzeki ngezikweletu abasohlwini lwesicelo; nawo

(b) onke amahhovisi ama-credit bureau abhaliswe ngokusemthethweni.

(11) INkantolo yamacala ezikweletu ingasusa noma iguqule umyalelo wokungenelela isikweletu uma ulwazi lubekwe ngaphambi kweNkantolo yamacala ezikweletu lukhombisa ukuthi umuntu ofake isicelo sokungenelela isikweletu wayengathembekile ekufakeni kwakhe isicelo sokungenelela isikweletu wayengathembekile esicelweni sakhe noma ehluleka ukuhlangabezana nemibandela yomyalelo wokusizwa ngesikweletu.''.

Ukufakwa kwesigaba 88A nese-88B eMthethweni 34 wezi-2005

16. Lezi zigaba ezilandelayo zifakwa emva kwesigaba 88 kuMthethongqangi:

''**Umphumela wokusizwa ngesikweletu**

88A. (1) Umuntu ofaka isicelo sokusizwa ngesikweletu ofake isicelo sokusizwa ngesikweletu ngokwesigaba 86A akufanele ukuthi angene kwesinye isivumelwano, ngaphandle kwesivumelwano sokuhlanganisa izikweletu, nomhlinzeki wezikweletu ngaphandle kokuthi—

(a) uMlawuli weziKweletu kaZwelonke asenqabe isicelo sokusizwa ngesikweletu kanti nesikhathi esibekiwe sokufaka ngqo ngokwesigaba 86A(7) besiphelelwe yisikhathi ngaphandle kokuthi umuntu ofaka isicelo sokusizwa ngesikweletu engakasifaki isicelo esinjalo;

(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—

(b) iNkantolo yamacala ezikweletu isinquma ukuthi umuntu ofake isicelo sokusizwa ngesikweletu akacwilile ezikweletini, noma usenqabile isiphakamiso soMlawuli weziKweletu kaZwelonke noma isicelo somuntu ofake isicelo sokusizwa ngesikweletu;

(c) iNkantolo yamacala ezikweletu emva kokukhipha umyalelo noma umuntu ofake isicelo sokusizwa ngesikweletu kanye nabahlinzeki bezikweletu emva kokuba sebenze isivumelwano sokuhlela kabusha izibopho zomuntu ofake isicelo sokusizwa ngesikweletu kanye nazo zonke izibopho zomuntu ofake isicelo sokusizwa ngesikweletu ngaphansi kwezivumelwano njengoba zihlelwe kabusha zigciniwe, ngaphandle kokuthi-ke umuntu ofake isicelo sokusizwa ngesikweletu egcine izibopho ngendlela yesivumelwano sokuhlanganisa isikweletu; noma

(d) isikhathi esishiwo esigabeni 87A(8) sesiphelile.

(2) Uma umuntu ofake isicelo sokusizwa ngesikweletu efezekise izibopho ngendlela yesivumelwano sokuhlanganisa izikweletu, umthelela wesigatshana (1) siqhubeka kuze kube umuntu ofake isicelo sokusizwa ngesikweletu egcina zonke izibopho ezingaphansi kwaleso sivumelwano sokuhlanganisa zonke izivumelwano zezikweletu.

(3) Umhlinzeki wesikweletu othola isaziso sesicelo esishiwo esigabeni 86A angahle angasebenzisi noma aphoqelele noma abeke icala noma yiyiphi enye inqubo yezomthetho noma yiliphi ilungelo ngaphansi kwesivumelwano sesikweletu kuze kube—

(a) uMlawuli weziKweletu kaZwelonke noma iNkantolo yamacala ezikweletu yenqaba isicelo noma umuntu ofake isicelo sokusizwa ngesikweletu uphule isivumelwano ngaphansi kwesivumelwano sesikweletu; futhi

(b) okunye kokulandelayo kwenzekile:

(i) isimo esishiwo esigatshaneni (1)*(a)*, *(b)* noma *(c)*; noma

(ii) umuntu ofake isicelo sokusizwa ngesikweletu ehluleka kunoma yisiphi isibopho ngokwesivumelwano sokuhlela kabusha okuvunyelenwe ngaso phakathi komuntu ofake isicelo sokusizwa ngesikweletu nabahlinzeki bezikweletu, noma ngokomyalelo weNkantolo yamacala ezikweletu.

(4) Uma umhlinzeki wezikweletu engena esivumelwaneni sesikweletu, kungesona isivumelwano sokuhlanganisa zonke izikweletu ngokusho kwalesi sigaba, nomuntu ofake isicelo sokusizwa ngesikweletu, olindele, noma kuncike, emyalelweni ohambelana nokungenelela esikweletini, konke, noma ingxenye yesivumelwano sesikweletu esisha singathathwa njengesikweletu esiwubudedengu, noma ngabe izimo ezishiwo esigabeni 80 ziyasebenza.

(5) Uma umuntu ofake isicelo sokungenelela esikweletini efaka isicelo, noma engena esivumelwaneni sesikweletu esiphikisana nalesi sigaba, imihlinzekelo ehambelana nokusizwa ngesikweletu angeke isebenze kuleso sivumelwano.

(6) Uma iNkantolo yamacala ezikweletu iyalela ukuthi isikweletu esingaphansi kwesivumelwano sesikweletu siyacinywa, umhlinzeki wezikweletu angahle angasebenzisi noma aphoqelele ngamacala noma ezinye izinqubo zokwahlulela noma yiliphi ilungelo elingaphansi kwaleso sivumelwano sesikweletu noma okuvela kulowo myalelo, ngokuphathelene nengxenye yesikweletu lapho lo myalelo usebenza khona.

Isicelo sokuhlunyeleliswa ngokwezikweletu

88B. (1) Umuntu ofake isicelo sokungenelela esikweletini owayenikwe umyalelo oshiwo esigabeni 87A(6) kungenzeka ngendlela enqunyiwe afake kuMlawuli weziKweletu kaZwelonke umyalelo wokulungiswa kwesimo sezikweletu ukuthi asinikwe yiNkantolo yamacala ezikweletu.

(2) Umuntu ofake isicelo sokungenelela esikweletini kufanele alethe ubufakazi bokuthi uzikhokhele izindleko zamanani njengokusho kwesigaba 101(1) njengoba beyifuneka ngosuku olubekiwe ngokomyalelo njengokusho kwesigaba 87A(6) wanikezwa, ngoku—

(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—''.

(a) khokhela ngokugcwele umhlinzeki wezikweletu ngamunye lawo manani; noma

(b) enze isivumelwano sokukhokha ngokugcwele nomhlinzeki wezikweletu ofanele kuze kube ukuthi lawo manani afezekiswe ngokwenelisa umhlinzeki wezikweletu.

(3) Isicelo somyalelo wokulungiswa kwesimo sezikweletu kufanele siphinde sesekwe yilolu lwazi njengokusho kukaNgqongqoshe, kanye nobufakazi bokuthi umuntu ofake isicelo sokungenelela esikweletini—

(a) sewenze ngcono esakhe noma esabo ngokuhlanganyela, njengoba kungenzeka, izimo zezezimali okungaholela ekutheni umuntu ofake isicelo sokungenelela esikweletini angabamba iqhaza emakethe yezikweletu; futhi

(b) uqede ngempumelelo uhlelo njengokwesigaba 87A(2)*(b)*(ii)

(4) Ekutholeni isicelo sokulungiswa kwesimo kwezezikweletu, uMlawuli weziKweletu kaZwelonke kufanele—

(a) azise, ngendlela enqunyiwe —

(i) bonke abahlinzeka ngezikweletu ababethintekile yilo myalelo ngokwesigaba 87A(6); kanye

(ii) nawo onke amahhovisi ama-credit bureau abhaliswe ngokwasemthethweni; futhi

(b) abheke isicelo sokulungiswa kwesimo sezikweletu kanti uma umuntu ofake isicelo sokungenelela esikweletini uye wahambisana nezimfuno ngokwesigatshana (2) nesesi-(3), adlulisele lolu daba ukuze lucutshungulwe yiNkantolo yamacala ezikweletu.

(5) Uma uMlawwuli weziKweletu kaZwelone enqaba isicelo sokulungiswa kwesimo sezikweletu, umuntu ofake isicelo sokusizwa ngesikweletu, ngaphandle kweNkantolo yamacala ezikweletu, angafaka isicelo ngqo eNkantolo yamacala ezikweletu, ngendlela enqunyiwe, yomyalelo ngokwesigatshana (7).

(6) INkantolo yamacala ezikweletu kufanele yazise umhlinzeki wezikweletu ngamunye othintekayo mayelana nosuku okuzocutshungulwa ngalo ukulungiswa kwesimo sezikweletu.

(7) INkantolo yamacala ezikweletu kufanele icubungule isicelo sokulungiswa kwesimo sezikweletu, kanti nanoma, futhi noma yiziphi izethulo ezilethwe umhlinzeki wezikweletu othintekayo futhi anganikeza umyalelo wokuthi umuntu ofake isicelo sokusizwa ngesikweletu uselungisiwe esimweni sezikweletu uma iNkantolo yamacala ezikweletu yenelisekile ukuthi umuntu ofake isicelo sokusizwa ngesikweletu uhambisene nezimfuno ngokwesigaba (2) nesesi-(3).

(8) Umyalelo wokuthi umuntu ofake isicelo sokusizwa ngesikweletu alungise isimo sezikweletu kunomthelela wokuthi nanoma yimuphi umkhawulo wamalungelo omuntu ofake isicelo sokusizwa ngesikweletu ngokwesigaba 60 ugcina ngosuku lwalowo myalelo.

(9) UMlawuli weziKweletu kaZwelonke kufanele azise umuntu ofake isicelo sokusizwa ngesikweletu nganoma yimuphi umyalelo kulesi sigaba, bese emnika ikhophi lalokho ngendlela enqunyiwe, kubo—

(a) bonke abahlinzeka izikweletu abasohlwini lwesicelo; nawo

(b) onke ama-credit bureau abhaliswe ngokusemthethweni.''.

Ukuchitshiyelwa kwesigaba 89 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 27 soMthetho 19 wezi-2014

17. Isigaba 89 soMthethongqangi siyachitshiyelwa ngokufaka endaweni yesigatshana (5) emagameni andulela indima *(a)* lawa magama alandelayo:

''Uma isivumelwano sesikweletu singekho emthethweni ngokwalesi sigaba, ngaphezu kwanoma yimuphi umthetho noma yikuphi ukuhlinzekwa kwesivumelwano esiphikisanayo, inkantolo noma iNkantolo yamacala ezikweletu, njengoba kungaba njalo, kufanele enze umyalelo onobulungiswa nofanele ofaka kodwa ungagcini ngomyalelo wokuthi—''.

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.

Ukuchitshiyelwa kwesigaba 90 soMthetho 34 wezi-2005

18. Isigaba sama-90 soMthethongqangi siyachitshiyelwa ngokufaka endaweni yesigatshana (4) emagameni andulela indima *(a)* lawa magama alandelayo:

"Kunanoma yiluphi udaba olungaphambi kwayo oluhlonipha isivumelwano sesikweletu esifaka ukuhlinzekwa ngokwesigatshana (2), inkantolo noma iNkantolo yamacala ezikweletu, njengalokhu kungaba njalo, kufanele—".

Ukuchitshiyelwa kwesigaba 106 soMthetho 34 wezi-2005, njengoba uchitshiyelwe yisigaba 30 soMthetho 19 wezi-2014

19. Isigaba 106 soMthethongqangi siyachitshiyelwa—

(a) ngokufaka endaweni yesigatshana (1) isigatshana esilandelayo:

"(1) Umhlinzeki wezikweletu angafuna ukuthi umthengi azigcine ngesikhathi sesivumelwano sabo sesikweletu—

(a) lapho isigaba (1A) singasebenzi esivumelwaneni sesikweletu, umshwalense wokuvikela isikweletu, ongedluli, nganoma yisiphi isikhathi sesivumelwano sesikweletu, isamba sezibopho zomthengi kumhlinzeki wezikweletu ngokwesivumelwano sabo; futhi

(b) **[noma]** umshwalense wokuvikela isikweletu, ngaphandle komshwalense wokuvikela isikweletu—

(i) uma kuyisivumelwano sesikweletu sendlu, **[ikhava yomshwalense]** uma kuyimpahla engakwazi ukuthathwa lokho kuzoya ngokwesikweletu sendlu, esingadluli inani laleyo mpahla yalowo mhlaba; noma

(ii) **[ku noma yini enye]** indaba yesivumelwano sesikweletu esimayelana nempahla esusekayo kwenye indawo, **[khava yomshwalense]** ephathelene nokonakala noma ukulahleka **[uma ikhona]** kwempahla **[ngaphandle kwale ebalulwe esigatshaneni (i)]** eyingxenye yodaba lwesivumelwano sesikweletu, engadluli, nanoma yisiphi isikhathi sesivumelwano sesikweletu, isamba sezibopho zomthengi ezisilele kumhlinzeki wezikweletu ngokwesivumelwano sabo.";

(b) ngokufaka ngemuva kwesigatshana (1) sesigatshana esilandelayo:

"(1A) Lapho isivumelwano sesikweletu sedlula izinyanga eziyisithupha, noma leso sikhathi elingabe libekiwe, futhi nesikweletu esikhulu asedluli izi-R50 000, noma inani elinjalo elingabe libekiwe, uNgqongqoshe angahle, ngokuxoxisana noNgqongqoshe weziMali, babeke okuyizidingo zomhlinzeki wezikweletu ukuthi adinge umthengi angene futhi agcine umshwalense ovikela isikweletu isikhathi esilingana nesivumelwano sesikweletu esingedluli, nganoma yisiphi isikhathi ngesikhathi sesivumelwano sesikweletu, isamba sezibopho ezisilele zomthengi kumhlinzeki wezikweletu ngokwesivumelwano sabo sezikweletu.";

(c) ngokufaka endaweni yesigatshana sesi-(3) isigatshana esilandelayo:

"(3) Ukwengeza kumshwalense ongadingeka **[isigatshana]** ngokwesigatshana (1) kanye nesoku-(1A), umhlinzeki wezikweletu anganika umthengi umshwalense angazikhethela wona ngokuphathelene nesibopho somthengi ngaphansi kwesivumelwano sesikweletu noma okuphathelene nalokho anakho, asebenzise, ubumnini noma inzuzo yezimpahla noma imisebenzi ayinikeziwe ngokwesivumelwano sesikweletu.";

(d) ngokufaka endaweni yesigatshana (4) emagameni andulela indima *(a)* lawa magama alandelayo:

"Uma umhlinzeki wesikweletu engahlongoza kumthengi ukuthengwa komshwalense othile wokuvikela isikweletu njengokushiwo esigatshaneni soku-(1), (1A) noma sesi- (3)—"; futhi

(e) ngokufaka endaweni yesigatshana (8) yesigatshana esilandelayo:

"(8) *(a)* UNgqongqoshe angahle, ngokuxhumana noNgqongqoshe wezezimali, anqume umkhawulo ngokwezindleko zomshwalense wokuvikela isikweletu lowo okungahle umhlinzeki wesikweletu akhokhise ikhasimende.

(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''.

(b) Lapho okuyisidingo okushiwo esigatshaneni (1A) sekubekiwe, uNgqongqoshe kufanele, ngokuxhumana noNgqongqoshe wezezimali, anqume umkhawulo ngokwezindleko zomshwalense wokuvikela isikweletu njengokwesigatshana (1A).''.

Ukuchitshiyelwa kwesigaba 129 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 32 soMthetho 19 wezi-2014

20. Isigaba se-129 soMthethongqangi sichitshiyelwe—

(a) ngokufaka endaweni yesigatshana (1) sendima *(a)* yendima elandelayo:

''*(a)* angazisa umthengi ngokubhalwe phansi mayelana nesikweletu esingakhokhiwe bese ephakamisa ukuthi umthengi adlulisele isivumelwano sesikweletu kuMlawuli weziKweletu kaZwelonke ukuze athole ukusizwa ngesikweletu, umeluleki wezikweletu, enye i-ejenti yokuxazulula izingxabano, inkantolo yabathengi noma i-ombud egunyaziwe, ngenhloso yokuthi labo abathintekayo baxazulule noma yikuphi ukungezwani ngaphansi kwesivumelwano noma basungule futhi bazwane ngesu ukuze kukhokhelwe isikweletu singabe sisakweleta; futhi'';

(b) ngokufaka endaweni yesigatshana (4) izindima *(b)* kanye *(c)* izindima ezilandelayo:

''*(b)* ukukhishwa komyalelo wenkantolo noma umyalelo weNkantolo yamacala ezikweleto ophoqelela isivumelwano; **[noma]**

(c) ukuqedwa kwaso ngokuhambisana nesigaba 123**[.]**; noma''; kanye

(c) ngokwengeza esigatshaneni (4) emva kwendima *(c)* yendima elandelayo:

''*(d)* iNkantolo yamacala ezikweletu yayalela ukuthi isikweletu esihambelana nesivumelwano sesikweletu sicishwe: ngaphandle kokuthi uma ingxenye kuphela yesikweletu esingaphansi kwesivumelwano sesikweletu yacinywa, lesi gatshana sisebenza kuphela kule ngxenye ecishiwe kanjalo.''.

Ukuchitshiyelwa kwesigaba 130 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngisigaba 33 soMthetho 19 wezi-2014

21. Isigaba 130 soMthethongqangi siyachitshiyelwa ngokwengeza emuva kwesigatshana (4) sesigatshana esilandelayo:

''(5) Kunoma yiyiphi inqubo ngokusho kwalesi sigaba, uma kukhonjiswa ukuthi isivumelwano sesikweletu sasingaphansi komyalelo ngokwesigaba 87A(6) futhi neNkantolo yamacala ezikweletu yayalela ukuthi isikweletu sonke esingaphansi kwesivumelwano sesikweletu sasicinyiwe, inkantolo kufanele iluchithe lodaba.''.

Ukuchitshiyelwa kwesigaba 137 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 110 soMthetho 4 wezi-2013

22. Isigaba 137 soMthethongqangi siyachitshiyelwa ngokushutheka ngemuva kwesigatshana (1) isigatshana esilandelayo:

''(1A) UMlawuli weziKweletu kaZwelonke kufanele adlulise izicelo zokusizwa ngesikweletu okufanele ngokwalo Mthetho, eNkantolo yamacala ezikweletu ngendlela enqunyiwe.''.

Ukuchitshiyelwa kwesigaba 142 soMthetho 34 wezi-2005, njengoba uchitshiyelwe ngesigaba 121 soMthetho 68 wezi-2008

23. Isigaba 142 soMthethongqangi siyachitshiyelwa-

(a) ngokususa isigatshana (3) ekugcineni kwendima *(f)* igama elithi ''noma''; futhi

(b) ngokufaka isigatshana (3) ngemuva kwendima *(f)* kwendima elandelayo:

''*(f*A*)* ukucutshungulwa kwesicelo sokusizwa ngesikweletu ngokushiwo esigabeni sama-86A; noma''.

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;

Ukuchitshiyelwa kwesigaba 152 soMthetho 34 wezi-2005, njengoba uchitshiyelwa ngesigaba 121 soMthetho 68 wezi-2008

24. Isigaba 152 soMthethongqangi siyachitshiyelwa—

(a) ngokususa isigatshana (1) ekugcineni kwendima *(e)* igama elithi ''futhi''; futhi

(b) ngokushutheka isigatshana soku-(1) ngemuva kwendima *(e)* kwezindima ezilandelayo:

''*(e*A*)* umhlinzeki wezikweletu;

*(e*B*)* umthengi; kanye''.

Nokufaka isigaba 157A, 157B, 157C kanye no-157D eMthethweni 34 wezi-2005

25. Izigaba ezilandelayo zifakwa ngemuva kwesigaba 157 soMthethongqangi:

''**Amacala ahambisana nokusizwa ngesikweletu**

157A. (1) Noma yimuphi umuntu oletha ngenhloso ulwazi olungelona oluphathelene nokusizwa ngesikweletu, noma oletha ulwazi oluphathelene nokusizwa ngesikweletu ngendlela ehlose ukukhohlisa uMlawuli weziKweletu kaZwelonke noma iNkantolo yamacala ezikweletu, unecala lokwephula umthetho.

(2) Noma yimuphi umuntu oguqula ngamabomu izimo zakhe zezemali, noma abantu abaguqula ngenhloso izimo zabo zezemali ngokuhlanganyela, ukuze balungele ukungenelela esikweletini banecala lokwephula umthetho.

Amacala ahambelana nezikweletu ngokujwayelekile

157B. (1) Umhlinzeki wezikweletu owenza ngenhloso lokhu —

(a) obamba iqhaza ezenzweni ezingekho emthethweni zokukhangisa izikweletu ngokushiwo yisigaba 74(2) nesesi-(3), isigaba 75(1) noma isigaba 91;

(b) ongahambisani nomkhawulo ophathelene nokwenza izivumelwane zesikweletu endaweni yokuhlala njengokushiwo esigabeni 75(2);

(c) ongahambisani nomkhawulo ophathelene nokubheka noma ukwenza isivumelwano sezikweletu lapho kusebenza khona umuntu njengokusho kwesigaba 75(3);

(d) ungena esivumelwaneni sesikweletu njengokusho kwesigaba 89(2) nalowo onga se abe umthengi;

(e) okufaka ukuhlinzeka njengokushiwo esigabeni 90 ngesivumelwano sesikweletu nalowo ongase abe umthengi; noma

(f) unikeza noma uphoqelela umthengi ukuthi athenge noma agcine umshwalense ongenasidingo esingako, ngezindleko ezingenasidingo, noma owenzelwe ingozi engeke yenzeke kumthengi, njengokushiwo esigabeni 106(2)*(a)* noma *(b)* ngokulandelana,

unecala lokwephula umthetho.

(2) Nanoma yimuphi umuntu othengisa ngokuzithandela isivumelwano sesikweletu lapho lo Mthetho usebenza khona leso sikweletu esicishiwe ngokwenhloso engaphansi kwesivumelwano sesikweletu lapho lo Mthetho usebenza khona nokuthi sewucinyiwe ngesinqumo esingaphansi kwe-*Prescription Act, 1969 (Act No. 68 of 1969)* njengokusho kwesigaba 126B(1)*(a)*, unecala lokwephula umthetho.

(3) Noma yimuphi umuntu oqhubeka nokuqoqa noma ozama ukuvuselela isikweletu ngaphansi kwesivumelwano sesikweletu okuhambisana noMthetho ngaphansi kwesimo esihlongoziwe esigabeni sama-126B(1)*(b)* unecala lokwephula umthetho.

Amacala ahlobene nokubhalisa

157C. (1) Noma yimuphi umuntu ozinikela ngokuzithandela ukuba—

(a) ngumhlinzeki wezikweletu, ngaphandle kokubhaliswa ngaphansi kwesigaba 39 noma isigaba 40 njengokufanelekile;

(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.

(b) ngumhlinzeki wezikweletu zokuzithuthukisa, ngaphandle kokubhaliswa ngaphansi kwesigaba 41;
(c) ihhovisi lezikweletu i-credit bureau, ngaphandle kokubhaliswa ngaphansi kwesigaba 43;
(d) umeluleki wezikweletu, ngaphandle kokubhaliswa ngaphansi kwesigaba 44;
(e) i-ejenti eyaba inkokhelo kwabakweletwa umthengi, ngaphandle kokubhaliswa ngaphansi kwesigaba sama- 44A; noma
(f) enye inhlangano exazulula ukungezwani, ngaphandle kokubhaliswa ngaphansi kwesigaba 134A,

unecala.

(2) Isigatshana (1) asisebenzi uma—

(a) ngesikhathi kwenziwa isivumelwano sesikweletu, noma ezinsukwini ezingama-30 emva kwaleso sikhathi, umhlinzeki wesikweletu esesifakile isicelo sokubhaliswa ngokwesigaba 40 eselinde umphumela wesicelo sakhe sokubhaliswa;
(b) ngesikhathi kwenziwa isivumelwano sesikweletu, umhlinzeki wesikweletu ubenesitifiketi esiqinisekisa ukukhokhwa kwentela esikhishwa uMlawuli wezikweletu kuZwelonke ngokwesigaba 42(3)*(b)*; noma
(c) lokhu okwenziwa kwakuyithransekushini eyenzeka kanye kuphela noma ngephutha ebhizinisini lomuntu okukhulunywa ngaye esigatshaneni (1): Inqobo uma konke okwenziwa yilowo muntu akuhlinzekeli isikweletu, ukwelulekwa ngesikweletu, okwabiwa kwenkokhelo yezikweletu kwababakweletwayo noma enye indlela yokuxazulula okukhulunywe ngakho kulo Mthetho, futhi ngeke kube ukubanjwa kweminininingwane njengoba kushiwo kulo Mthetho.

Amacala enziwe yinkampani

157D. Lapho khona umuntu owenze icala ngokwalo Mthetho kuyinkampani, bonke abaqondisi noma abasehhovisi abaqokiwe kuleyo nkampani obe yingxenye yokuphulwa kwalowo mthetho azi, naye ngaphansi kwalokhu okushiwo yilo Mthetho kanye nanoma yimuphi omunye umthetho, unecala ufanelwe yinhlawulo okungathi lowo mqondisi noma umuntu osehhovisi nguye owenze lelo cala ngokwakhe.".

Okufakwa esikhundleni sesigaba 161 soMthetho 34 wezi-2005

26. Lesi sigaba esilandelayo sifakwe esikhundleni sesigaba 161 soMthethongqangi:

"**Izinhlawulo**

161. (1) Wonke umuntu olahlwe yicala elihambelana nalo Mthetho, kumele—

(a) uma ephule umthetho wesigaba 160(1), kumele akhokhe inhlawulo noma avalelwe ejele isikhathi esingeqi eminyakeni eyi-10, noma akhokhe inhlawulo futhi avalelwe nasejele; **[noma]**
*(a*A*)* noma la kusolakala khona ukuphulwa kwesigaba 157A,—
  (i) inhlawulo noma ukuvalelwa ejele kungabi ngaphezu kweminyaka emibili noma kokubili ijele nenhlawulo; kanye
  (ii) nokuvinjelwa unomphelo ekufakeni isicelo sokungenelela ekusizeni ngezikweletu;
*(a*B*)* lapho kube khona ukuphula umthetho okushiwo esigabeni 157B noma 157C, enhlawulweni noma ijele kungeqi eminyakeni eyi-10 noma kokubili inhlawulo nejele noma, uma umuntu olahlwe yicala kuyinkampani njengoba kushiwo esigabeni 157D, enhlawulweni engeqi amaphesenti ayishumi ayo yonke imali eyenziwa ngonyaka noma izi-R1 000 000, noma ngabe ikuphi okukhulu kunokunye; noma
(b) lapho kuyisigameko esingabalwanga endimeni *(a)*, (*a*A*) noma (a*B*)*, inhlawulo noma ijele isikhathi esingeqi ezinyangeni ezi-12, noma kokubili inhlawulo nejele.

(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

(2) Ekunqumeni inhlawulo efanelekile, kumele kubhekwe lokhu okulandelayo:

(a) Uhlobo, isikhathi, ukujula kanye nobunzima becala;
(b) ukulahlekelwa nomonakalo owenzekile ngenxa yaleli cala;
(c) ukuziphatha kwalo muntu olahlwe yileli cala ngokwalo Mthetho;
(d) izimo zemakethe okuphulwe kuyo umthetho;
(e) inani lesivumelwano okungenwe kuso esenze kugcine kuphulwa lo mthetho;
(f) izinga umuntu olahlwe icala elihambelana nalo Mthetho asebenzisane ngalo noMlawuli weziKweletu kuZwelonke noma iNkantolo yamacala ezikweletu; nokuthi
(g) umuntu olahlwe icala elihambisana nalo Mthetho sewake walahlwa yini elinye icala elingaphansi kwalo Mthetho.

(3) ukuphuma nenhlawulo efanelekile ngokwesigaba (1)*(a*B*)*, kumele kubalwe inzuzo eyenziwe onyakeni ngokwesigaba 151(4).''.

Ukuchitshiyelwa kwesigaba 164 soMthetho 34 wezi-2005

27. Isigaba 164 soMthethongqangi sichitshiyelwe ngokufakwa esikhundleni sesigatshana (1) kwesigatshana esilandelayo:

''(1) **[Akukho lutho kulo Mthetho okushaywa indiva]** Isivumelwano sesikweletu noma ukuhlinzekwa kwesivumelwano sesikweletu, ngokwalo Mthetho, asivumelekile noma singathathwa njengesingekho emthethweni, asishaywa indiva ngaphandle uma inkantolo noma iNkantolo yamacala ezikweletu, noma ikuphi okusebenzayo, inquma ukuthi lesi sivumelwano noma ukuhlinzekela akukho emthethweni.''.

Ukuchitshiyelwa kwesigaba 165 soMthetho 34 wezi-2005

28. Isigaba 165 soMthethongqangi sichitshiyelwe—

(a) ngokufaka esikhundleni samagama angaphambi kwendima *(a)* lawa magama alandelayo:

''(1) INkantolo yamacala ezikweletu, izenzela ngokwayo noma ngokwesicelo somuntu othintwa yisinqumo noma umyalelo wenkantolo, **[ukwehluka]** ingashintsha noma ihoxise isinqumo sayo noma umyalelo wayo—''; kanye

(b) nokwengeza emva kwendima *(c)* lesi sigatshana esilandelayo:

''(2) INkantolo yamacala ezikweletu ingashintsha noma ihoxise umyalelo wayo—

(a) uma kunemininingwane phambi kweNkantolo yamacala ezikweletu ekhombisa ukuthi lowo muntu uqambe amanga ngakushilo noma ngokuphikisayo akulethe phambi kweNkantolo yamacala ezikweletu; noma
(b) uma umuntu othintekayo kulowo myalelo wenkantolo ehlulekile ukulandela imibandela yomyalelo noma ehluleka ukulandela lo Mthetho.''.

Ukuchitshiyelwa kwesigaba 171 soMthetho 34 wezi-2005

29. Isigaba 171 soMthethongqangi sichitshiyelwe—

(a) ngokufakwa kwesigatshana (1) emva kwendima *(b)* kwalezi zindima ezilandelayo:

''*(b*A*)* kumele yenze izimiso mayelana nokubamba iqhaza ezinhlelweni zokufunda ngezezimali kanye noNgqongqoshe wezeziMali mayelana nokuxhaswa ngemali kwalezi zinhlelo;

*(b*B*)* (i) kumele yenze izimiso malungana nendlela yokuyalela okungenziwa yiNkantolo kaMantshi kanye neNkantolo yamacala ezikweletu uma iNkantolo kaMantshi noma iNkantolo yamacala ezikweletu malungana nokukhulunywa ngako esigabeni sama-86(7)*(c)(ii)*(ccA) kanye no-87(1A)*(b)*(ii)*(dd)*; futhi

(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;

(ii) kumele, uma yenza izimiso okukhulunywa ngazo endinyaneni (i)—

(aa) icabangele amazinga nezinqubo zezimboni;

(bb) ifanise izimfuno ezibalulwe kumihlahlandlela yezimboni njengoba ishicilelwe uMlawuli WeziKweletu KaZwelonke ngaphansi Kwezivumelwano Zethimba Lokusebenza Elibukeza Izikweletu, 2010;

(cc) yahlukanise ngokucacile phakathi kokuncishiswa kwezinga lentela elingase linqunywe yiMantshi malungana nezikweletu ezingavikelwe, nalokho kuncishiswa okungase kufinyelele kokuyiqanda, kanye nokuncishiswa kwezinga lentela malungana nezikweletu ezingavikelwe, ukuncishiswa lokho okungase kungaholeli ekubeni izinga libe ngaphansi kwezinga lokuthengwa kabusha kuhlanganiswe nalelo phesenti njengoba kukhonjisiwe mayelana nalokhu kumihlahlandlela yezimboni okukhulunywa ngayo esigatshananeni *(bb)*, lapho izinga lokuthenga kabusha liyizinga lenzalo elinqunywe yiKomidi Lezinqubomgomo Zezimali leBhangengodla laseNingizimu Afrika njengezinga lenqubomgomo yakhona futhi libonisa izinga amabhange okuhweba aboleka ngalo amarandi kulona njengebhange elikhulu laseRiphabhulikhi yaseNingizimu Afrika, ngaleyo ndlela lisebenza njengesilinganiso esibonisa izinga lokubolekisa kwamabhange emakethe; futhi

(dd) ifune ukuthi iNkantolo kaMantshi neNkantolo yamacala ezikweletu baqale basebenzise ukunyuka kanye nokwehla okulinganayo ngesikhathi kubhekwa inzalo enkulu, izimali noma ezinye izindleko; kanye

(b) nokufakwa kwalesi sigatshana esilandelayo emva kwesigatshana (2):

"(2A) *(a)* UNgqongqoshe angahle njalo ezinyangeni eziyi-12, ngokufaka isaziso *kuGazethi* nasemva kokubheka amaphuzu alandelayo, alungise leli nani elishiwo encazelweni yegama elithi "umfaki sicelo sokusizwa ngezikweletu" esigabeni 1 mayelana nemali enkulu ayiholayo engantelwanga lowo ongumfakisicelo:

(i) Umholo ongantelwanga okumele umthengi abe nawo ukuze abe umthengi ofanalekile ukuba elulekwe ngezikweletu kusukela ngesikhathi soshintsho oluhlongoziwe;

(ii) izindleko ezihambisana nokuphathwa kanye nomyalelo wokudliwa kwempahla ngesikhathi sokuhlongozwa kokulungiswa kwenani; kanye

(iii) nokwehla nokwenyuka kwamandla emali.

(b) UNgqongqoshe angase njalo ezinyangeni eziyi-12 ngokufaka isaziso *kuGazethi*, alungise inani lesikweletu esingavikelwe elifanelekile okukhulunywa ngalo esigabeni 86A(1), emva kokubheka umthelela ongabangelwa ukwehla nokwenyuka kwamandla emali okungenzeka ukuthi ube khona kulelo nani.

(c) UNgqongqoshe kumele abukeze inani okukhulunywe ngalo encazelweni yegama elithi 'umfakisicelo sokusizwa ngezikweletu" esigabeni 1 mayelana neholo elikhulu elinganteliwe lomfakisicelo sokusizwa ngezikweletu, kanye nenani laso sonke isikweletu esingavikelekile okukhulunywe ngaso esigabeni 86A(1), emva kwezinyanga eziyi-12 kuqale ukusebenza koMthetho oChitshiyelwe weziKweletu kaZwelonke, ngonyaka wezi-2018 bese emva kwalokho kuba njalo ezinyangeni ezingama-24 futhi kufanele ethule umbiko mayelana nalokhu kubukeza phambi KwesiShayamthetho Sikazwelonke.

(d) Ngaphambi kokuba uNgqongqoshe alungise inani okukhulunywe ngalo endimeni *(a)* noma *(b)* uNgqongqoshe kumele—

(i) axhumane nababambiqhaza abafanele bese ethula umbiko ofinqiwe walezi zingxoxo phambi kwesiShayamthetho sikaZwelonke;

(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*.

This gazette is also available free online at **www.gpwonline.co.za**

(ii) ethule inani elilungisiwe phambi kwesiShayamthetho sikaZwelonke, sihambisane nencazelo yoshintsho olwenziwe; futhi
(iii) athole imvume kusiShayamthetho sikaZwelonke mayelana nalelo nani elilungisiwe.

(e) Inani elikhulu lomholo womfakisicelo elinganteliwe ofuna usizo ngezikweletu osicelo sakhe kukhulunywa ngaso ngaphansi kwesigaba 86A(6)*(e)*, kanjalo nenani eliphelele lesikweletu esingavikelwe esihambelana nesicelo esinjalo ngeke saguqulwa njengoba kushiwo ezindimeni *(a)* kanye no *(b)* ngenxa yobufishane besikhathi esibekiwe <u>sokudluliswa ngaphansi kwalesi sigaba</u>.

Ukufakwa esikhundleni kwesihloko eside soMthetho 34 wezi-2005

30. Lesi sihloko eside sifakwe esikhundleni sesihloko eside soMthethongqangi:

> ‘‘**Ukukhuthaza isimo sokuwhebelana esinobulungiswa futhi esingenabandlululo lapho abathengi bezokwazi ukufinyelela usizo lokukweleta futhi ngenxa yalokho ukuze kuhlinzekelwe izimiso ezingujikelele zokukweleta kwabathengi kanjalo namazinga aphuculiwe emininingwane yabathengi ukuze kukhuthazwe ukuhlonyiswa kohlelo lokuthuthukiswa kwabamnyama kwezomnotho kanye nobunikazi phakathi embonini yezikweletu ukuze kuvinjelwe imikhuba engenabulungiswa yezikweletu neyokukhangisa izikweletu ukukhuthaza ukunikezwa kwezikweletu okufanelekile ngenhloso yokuthi kuvinjwe ukubolekisa okubudedengu noma ukungenelela ezikweletini ezimweni lapho la khona umuntu esecwile ezikweletini; ukulawula imininingwane yezikweletu, ukuhlinzekela ukubhaliswa kwamahhovisi ezikhungo ezibhekelele imininingwane yezikweletu, ama-credit bureau, abahlinzeki ngezikweletu kanye nabosizo lwezokweluleka ngezikweletu; ukusungula imikhuba kazwelonke nemigomo emayelana nokukweleta kwabathengi; ukukhuthaza uhlaka lokusebenza oluzinzile oluhlobene nokukweleta kwabathengi, ukusungula uMlawuli WeziKweletu KaZwelonke kanye neNkantolo KaZwelonke Yezikweletu Zabathengi ukuze ichithe uMthetho kuWokuBolekisa Ngemali Okunenzuzo Ephakeme, i-Usury Act, 1968, kanye noMthetho weziVumelwano zeziKweletu, we-1980; nokuhlinzekela izigameko ezihlobene nalokhu.**’’.

Ukuhlinzekelwa kwezinguquko

31. Ngaphandle kwezindima 19, 25 kanye no-26, uMthetho oChibiyela uMthetho weziKweletu kuZwelonke, wezi-2018, usebenza esivumelwaneni sesikweletu esenziwa ngaphambi kosuku lokuqala ukusebenza koMthetho oChibiyela uMthetho weziKweletu kuZwelonke, wezi-2018, uma leso sivumelwano sesikweletu singena ngaphansi kokusebenza koMthethongqangi ngokweSahluko soku-1 soMthethongqangi.

Isihloko esifishane nokuqala kokusebenza koMthetho

32. Lo Mthetho ubizwa ngoMthetho wokuChibiyela uMthetho weziKweletu kuZwelonke, wezi-2019 futhi uzoqala ukusebenza ngosuku olubekwe uMongameli ngokulumemezela *kuGazethi*.

This gazette is also available free online at www.gpwonline.co.za

Printed by and obtainable from the Government Printer, Bosman Street, Private Bag X85, Pretoria, 0001
Contact Centre Tel: 012-748 6200. eMail: info.egazette@gpw.gov.za
Publications: Tel: (012) 748 6053, 748 6061, 748 6065

This gazette is also available free online at **www.gpwonline.co.za**