

# DEBT COUNSELLORS ASSOCIATION OF SOUTH AFRICA

## NEWSLETTER



### THE LATEST UPDATE ON THE DEBT RE-ARRANGEMENT DISCUSSION DOCUMENT

The Debt Re-arrangement (DRA) discussion document has been around at the Law Reform Commission since before the introduction of the National Credit Act (NCA). Back then it was intended to deal with Administration only and after the introduction of the NCA the DRA document was put on hold.

The document has resurfaced and is updated, the updated version intends to alter the rules around Administration and to, long term, combine Administration and Debt Counselling.

It is a colossal document, but the Debt Review section starts at Page 252, to see the full discussion document click [HERE](#).

Another notable change is that both the Debt Counsellors and Administrators will fall under The National Credit Regulator (NCR) and be governed by the NCA. Administrators at present fall under the Magistrates Court Act.

The discussion document is now at public comment stage and still needs to be referred to Parliament.

DCASA has made submissions to the Commission. The most pertinent issues are addressed below:

[info@finwise.biz](mailto:info@finwise.biz)



[web.finwise.biz](http://web.finwise.biz)

### Debt Management Software

Multiple Reports    iDOCS integrated    Support  
Drex Integrated    Debicheck    Consumer Portal  
No monthly cost for use of Finwise  
Connected to PDA - No delay in communication



## Head office or branch office of Debt Counsellor

**A.** The Debt Counsellor needs to have a branch within 50km of where the Debtor lives or works. This addresses the problem of communication with the Debt Counsellor, as the Debtor can get to their office and not rely on technology to which some don't have reliable access. We all know some of the cases handled by the National Consumer Tribunal where dubious call centers take on tons of Clients and offer no help after application. These Debt Counsellors give the Industry a bad name. However, two issues may arise:

1. Where there is no Debt Counsellor within 50km.  
and
2. Where the client, possibly with many assets and a complicated application, would like to choose a Debt Counsellor who he or she believes is experienced enough for these types of applications, and can easily contact them or get to their offices.

So effectively, this caters to the lower end of the market and makes it more difficult for the upper end of the market as it stands at present.

Many Debt Counsellors and Administrators operate with centralized call centers with little or no representation outside of their head offices. They would wish to continue to operate countrywide and it would be expected that a number of branch offices will be established around the country.

DCASA's submission was that at each branch office have the:

- Minimum standards for training and qualification of staff, it should be mandated.
- Minimum number of staff per branch should be Debtor volume related
- Time periods for the availability of information to the Debtor should also be stipulated



## Reckless Credit

**B.** Not much outside of what we are doing at present is included, except that the Debt Counsellor would only get their fee once success was obtained in Court – which is unreasonable.

To assist with reckless assessments and to easily remove a number of applications from the "possibly reckless" list would be a workable table, like a tax table, which will allow credit up to a certain level of income for all, no questions asked. Assessments will only be done outside of this framework.

Only those that fall outside of these norms will be assessed for possible reckless, pretty much as we do now from a granting and Reckless Credit point of view.

## ***This was DCASA's comment on the fees***

The reckless "success fee" will eliminate the abuse mentioned, however, many hours are spent on the investigation of Reckless Credit. Many Debtors request an investigation, in other cases the possibility of Reckless Credit is evident after viewing the debt payment vs income.

The fee originally envisaged by the NCR made allowance for a certain amount of investigations where the fee would be paid but the matter later found not to be reckless. Here a Debt Counsellor is paid only on success.

In the case of a failed application, he/she would receive nothing. No-one in the legal profession is paid like this. If the reckless application fails because the Debtor provided false information on his credit application, the Debt Counsellor through no fault of his own and after a thorough reckless case would not be paid.



## Call for meetings of creditors

**C.** Instead of the Magistrate's Court being burdened with cases where Creditors have not accepted, a meeting of Creditors prior to the Court hearing is proposed, to be chaired and called by the Debt Counsellor.

The present legal situation regarding submissions of proposals to Credit Providers is very seldom a problem in the Industry but needs to be remedied. In practice virtually all viable proposals are reviewed by Credit Providers prior to proceeding to Court.

The idea of a forced meeting of Creditors to attempt to reach agreement is a good one. In practice this has done a great deal albeit one Creditor at a time to obtain consent before the Court date.

The Creditor meeting has potential to cause a bottleneck in the process, and Creditors may attempt to delay the process. The Debt Counsellor can only proceed to Court once the meeting of Creditors has been concluded.

The Debt Counsellor has 60 days to issue the Debt Review Application. It is proposed that a voting majority in a Creditors meeting would be of monetary value.

The method of determining majority has some pit falls, especially where there is one large value agreement such as a mortgage bond. The mortgagor needs to accept or the opposite and the other Creditors will have to proceed to Court to be heard.

## Realization of assets by Debt Counsellor

**D.** Debt Counsellor must assess the assets of the Applicant, and where possible, with the applicant's permission, release (sell) unnecessary assets.

Debt Counsellors are at present not valuers, nor are they entitled to perform this role. The sale of assets is often discussed with debtors and can result in the debtor selling an asset with the permission of the Credit Provider through an informal process in an attempt to reduce the debt level of the debtor.

This role is complicated and open to abuse and should only be performed by "senior Debt Counsellors" or those that have sufficient training

or experience.

A current Industry problem which cannot be solved once a Consumer has applied for Debt Review is to down grade an expensive vehicle.

At present it would involve cancellation of the present credit agreement and entering into a new one, which once a Debtor has applied for Debt Review is not permitted.

Downgrading an expensive vehicle is in the interest of the Debtor, however it's subject Credit Provider and all the other Credit Providers to the application.

## Suspension, amendment or rescission of debt rearrangement order

**E.** A Court Order can be taken back to Court, and a "no longer overindebted" case can be made. It is proposed to enhance the informal 17.3 process to an amendment of the Court Order.

However the cost to Debtors particularly in the case of amendments is a problem.

## Offences by unregistered person

**F.** This is a problem in our Industry, and we would like to see a serious penalty attached to this clause, and not just "guilty of an offence."

## Training

**E.** Minimum annual course attendance should be part of the conditions of registration of all Debt Counsellors.

Continuous professional development programs established.

These are some of the main points from the Bill. We suggest that you become familiar with the parts pertaining to Debt Counsellors and let the Commission or DCASA have your suggestions. This is going to change our Industry. - **Mr Russell Dickerson (President of DCASA)**

Go and like our Facebook page, we also have exciting news for our members as we are busy launching our DCASA MEMBERS ONLY FACEBOOK GROUP



### **What is DCASA doing against rogue Debt Counsellors and how to avoid becoming a victim?**

The Debt Counsellors Association of South Africa has been working with the NCR and various other stakeholders to curb the abuse seen in some Debt Counsellor practices.

- i. Misleading Advertising, where they state –“We can remove your Debt Review status. Easy loans Debt Review - no problem. We can do the same as your current Debt Counsellor but for a lot less. “
- ii. Comparison sites claiming to be the best. (Remember the Top Debt Counselling Company mentioned on the site is the company that pays for the advert).

As there are still a number of “rogue Debt Counsellors” trading, it has become more important than ever to make sure you are dealing with a “Good/Reputable” Debt Counsellor.

#### **Things to look out for as red flags:**

1.A Debt Counsellor claiming that they will be able to do the same job for less.

- i. There are set guidelines that all Debt Counsellors must work with so the repayments you make via any Debt Counsellor should be about the same based on your affordability.

2.They claim they can remove/exit you from Debt Review. (Note this is after you have already been declared over indebted).

- i. You can only be removed from Debt Review once you have settled all your debts (with the exception of your Bond).
- ii. A court determines that you are no longer over indebted.
- iii. You are approved for a full consolidation loan to clear all your debt.

#### **3.DO YOUR OWN RESEARCH!!**

i.Go to [www.hellopeter.com](http://www.hellopeter.com) type in the Debt Counselling company name and look at the reviews. (This is the best guide in my opinion)

ii.How long has the company been established.

iii.Do they have the infrastructure needed to deal with your Debt Review?

Remember this is your livelihood and YOUR MONEY so make sure you do the research and you should be able to avoid becoming a victim to these people.

All the best from Reinhard Pettenburger (Debt Therapy) DCASA Western Cape DCASA Branch Representative

### **The Debt Re Arrangement Bill should be incorporated with the Debt Intervention Bill.**

The overarching principle of the Debt-Rearrangement project is that the Debtor makes full payment.

It is proposed to do away with Administration and combine it with Debt Counselling to align the debt relief measures which makes sense.

To then set up a parallel system to handle Debt Intervention seems counter-intuitive. Why spend the state's scarce resources setting up a debt relief system from scratch, when a perfectly workable system exists.

There is a system in place, including calculation and payments systems. A network of Debt Counsellors (including Administrators) over the entire country, close to where debtors live, who already have most of the expertise which would be required to implement the Debt Intervention Bill.

A wish to separate Debtors who can make an arrangement from those who cannot. And to set up a parallel process where a tried and tested process countrywide already exists.

Is where policy trumps logic in terms of costs to the country and ultimately to all of us as taxpayers. - *Russell Dickerson*

## CIF Sub committee updates:

### CIF Sub Committee – Debt Help System

Section 86(4) of the National Credit Act (NCA), requires a Debt Counsellor to notify the Credit Bureaus of a Debt Review application in order to prevent Reckless Credit lending and borrowing.

To prevent inefficiencies as a result of the manual intervention in implementing this provision, in 2008 the National Credit Regulator (NCR) proactively developed a web-based system called the Debt Help System (DHS) to serve as a communication tool of this information from the Debt Counsellors (DCs) to the Credit Bureaus (CBs). This information is transmitted to the Credit Bureau on a daily basis through the Secure File Transfer Protocol (SFTP). Upon receipt of the SFTP, the CBs have to place a Debt Counselling indicator on the Consumers' credit profile.

DHS is bespoke as it is built in alignment with the rapidly evolving Debt Counselling process/landscape and requires dedicated and specialized services for management, support and maintenance. With the passing of time, the DHS became a significant reporting and compliance monitoring tool for the NCR to date.

Although not exhaustive, the primary functionalities of DHS include the following:

- Loading of Debt Counselling applications by DCs from the front end;
- Daily and overnight transmission of data to the CBs via SFTP;
- Updating of status codes on progress of application by the DCs;
- Search functionality for the NCR and DCs;
- Automatic transfer of a single Consumer from one DC to the other;
- Manual bulk transfer of Consumers by the NCR from one DC to the other;
- Database storage; and
- Dashboard reporting for the NCR and DCs.

Due to the evolving nature of Debt Counselling and the advancement of technology with regards to integration of systems, document storage and software functionality, the NCR would like to undertake the development of the DHS to amongst other things, include new functionalities, integrate with existing Debt Counsellor software systems, improve the document upload and storage capabilities and others.

The objective of this project is to capacitate the NCR and the Debt Counselling Industry with a highly automated system that improves efficiency of the Debt Counselling process, enhances the reporting and compliance monitoring of the NCR.

In light of the above, the NCR would like to appoint a Service Provider for a period of four (4) years to develop DHS, provide support and maintenance post the development of DHS.

In providing this service, the Service Provider must pay attention to the following terms of reference and have regard to the application and compliance with the Protection of Personal Information Act (POPIA)

### CIF Annual Review

This sub committee was established in order to determine the extent of a Debt Counsellor's Annual Review Functions. We have had a meeting to discuss BASA's proposal document for an Annual Review, amongst other things DCASA raised the fact that the procedure is too complicated and burdensome for a Debt Counsellor. It was proposed by other Industry Participants that DCASA will draft a simplified form or proposal, which DCASA has done and included that the after-care fee should be re-looked at to include Annual Reviews. A meeting will be held end of April to discuss the document. The aim is to consent to a guideline for all Industry Participants, which the NCR can accept and publish.

### CIF Sub Committee Revision of DC Fees

The committee is still deciding on the Terms of Reference for the sub committee. DCASA has circulated a Terms of Reference on the aforesaid sub-committee to its members, the comments were compiled on the Terms of Reference and submitted. The main issues were that DCASA perceived this sub committee as being unfairly targeting and placing stricter rules on the Debt Counselling Industry by attempting to root out the rogue Debt Counsellors.

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