

BLACK SASH

Supplementary Submission

to the

Department of Social Development

on the

**DRAFT AMENDMENTS TO SECTION 26A OF THE REGULATION TO THE
SOCIAL ASSISTANCE ACT**

March 2016

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A) INTRODUCTION

About the Black Sash Trust

1. The Black Sash Trust ('Black Sash') welcomes the opportunity to submit comments on the Draft Amendment: Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance, 2016¹ ('Draft Amendment') in response to a call by the Department of Social Development ('DSD') to make submissions. In the event that DSD hosts public consultations on the Draft Amendment, Black Sash, (together with its partner organisations) hereby request to be heard.
2. Black Sash is a non-party political and non-profit organisation registered as a Trust in terms of the laws of South Africa. Black Sash's vision is a South Africa in which: human rights are recognized in law, respected and implemented, particularly socio-economic rights; all sectors of society (state, private sector and civil society) takes responsibility for reducing poverty and inequality including social and economic justice; government is accountable to all its people and attends to their basic needs in a dignified manner; the Constitution of the Republic of South Africa ('Constitution') is protected, promoted and fulfilled by all; and the rule of law is respected.
3. Black Sash's mission is working towards the realisation of socio-economic rights, as outlined in the Constitution, with the emphasis on social security and social protection for the most vulnerable particularly women and children. We will, in the course of our work, explore options to significantly reduce poverty and inequality. We believe the implementation of socio-economic rights demand open transparent and accountable governance. To this end we will promote an active engagement by all living in South Africa and made possible by a strong and vibrant civil society comprising community based organisation, non-governmental organisations, coalitions and movements.
4. Black Sash seeks to ensure that the poor, vulnerable and marginalised people who are the recipients of social grants are treated with dignity, efficiency, and with due regard to their constitutional and statutory rights. It achieves this aim, in a variety of ways, which for brevity, are not outlined here.
5. What should, however, be noted for the purposes of these submissions is that Black Sash leads the civil society delegation in a Ministerial Task Team ('MTT') set up by Minister Dlamini in 2014, mandated to explore the nature of the deductions, provide recommendations to stop them, and ways to ensure that grant recipients had access to appropriate recourse. Black Sash has also intervened as *amicus*

¹ *Government Gazette* 36698 of 15 February 2016.

curiae in a number of court cases to highlight the need for more stringent oversight over deductions on social grants.²

6. It follows from the above that Black Sash is both committed to the realisation of the right to social security/assistance as set out in the Constitution and well versed in issues pertaining to social grants.

Black Sash's Submissions in Brief

7. Black Sash submits that the protection of social grants from unlawful deductions is a seminal element of the right to social security/assistance as set out in the Constitution and International Law.
8. We therefore take the view that tightening the provisions pertaining to deductions from social grants is necessary for the protection of social grants. Any failure to do so, by the state, constitutes a failure to protect the right and therefore an independent human rights violation. Black Sash is also of the view that Draft Amendment should be further tightened.
9. In summation, Black Sash submits that the DSD should amend the Draft Amendment for better alignment to South Africa's Constitution and jurisprudential law which requires the state respect, protect, promote and fulfil the right to social security and to take account the demands of International law on a state.

B) INTERNATIONAL AND DOMESTIC LEGAL FRAMEWORK

International Legal Framework

10. The right to social security was first recognised in the first universally accepted international human rights instrument — the Universal Declaration of Human Rights ('Universal Declaration').³ It has since been incorporated into a number of other international instruments through the United Nations ('UN'): International Covenant on Economic, Social and Cultural Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women, and the Convention on the Rights of the Child.⁴
11. These instruments also demand that the state take legislative, judicial, administrative, (and other appropriate measure to ensure the right to social security).⁵

²*Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others (No 2)* 2014 (6) BCLR 641 (CC) and *Channel Life and Another v South African Social Security Agency*, NGHC 79112/15 (not yet heard).

³Article 22.

⁴Articles 9, 5(e)(iv), 11(1)(e), and 26.

⁵Articles 2(1), 9(1), 2(b), and 3(2).

Domestic Constitutional Framework

12. The Constitution provides that everyone has the right to have access to social security; it also provides that the state has the obligation to protect, promote and respect the right to social security.⁶ This includes, if they are unable to support themselves and their dependents, appropriate social assistance. Like international law, the Constitution provides that to this end, the state must take reasonable legislative and other measures, within its available resources, to achieve progressive realisation of each of the right to social assistance.⁷ Further, the Constitution calls on that state to take both positive and negative steps to realise human rights within the “respect, protect, promote, fulfil” framework. The grant system is therefore an important component of South African’s overall social security architecture. The social grant needs to be viewed as part of the broader pursuit of socio-economic rights in South Africa and in line with this, its intended purpose, is to alleviate and reduce poverty, vulnerability, social exclusion and inequality. The transformative aspirations of the social grant system should not be diluted but must, in fact, be enhanced.
13. The Asian Development Bank refers to social assistance as a means of social protection and defines it as: “a set of policies or programs designed to reduce poverty and vulnerability by promoting efficient [labour] markets, diminishing people’s exposure to risks, and enhancing their capacity to protect themselves against hazards and interruption or loss of income”.⁸ By this definition, social grant beneficiaries’ exposure to risk needs to be diminished, and an important component of this is to enhance the social grant beneficiaries’ capacity to protect themselves from hazards and interruptions, which may come in the form of unauthorised, unsolicited and unlawful deductions from the bank accounts in which their social grants are paid.

Domestic Jurisprudential Framework

14. The Constitutional Court first considered the states obligations vis-à-vis socio-economic rights in *Grootboom* ⁹ which concerned the section 26 right to housing. *Grootboom* successfully sets the pace for how a discourse on socio-economic rights should be approached. In this case, the court had to interpret section 26 of the Constitution in order to arrive at a decision on whether or not the government had met its constitutional mandate relating to housing rights towards *Grootboom* and others. The Constitutional Court said that the government housing programme fell short of its constitutional obligation because it fails to provide relief to people in desperate need.¹⁰ Providing social assistance also includes providing social

⁶ Section 27(1)(c) read with section 7(2) of the Constitution.

⁷ Section 27(2) of the Constitution.

⁸ Bloom et al ‘Social protection and conditional cash transfers’ in Handayani and Burkley (eds) *Social assistance and conditional cash transfers: The proceedings of the regional workshop* (2009), at p 12.

⁹ *Government of the Republic of South Africa and Others v Grootboom and Others* 2001 (1) SA 46 (CC) (hereinafter ‘Grootboom’).

¹⁰ *Grootboom*, para 95.

protection, which in this instance means protecting and securing the accounts of social grant beneficiaries from **unauthorized and unlawful** deductions.

15. Ultimately, the court developed a test based on: (i) reasonable legislative and other measures; (ii) progressive realisation of the rights; and (iii) within available resources. A description of the test follows:
 - 15.1. *Reasonable legislative and other measures*: It is crucial that a programme implemented for realisation of a socio-economic right ‘be balanced and flexible and make appropriate provision for attention to housing crises and to short, medium and long term needs. A program that excludes a significant segment of society cannot be said to be reasonable. Further, such measures, even if statistically successful, may not pass the reasonableness test if they fail to respond to those in desperate need.¹¹
 - 15.2. *Progressive realisation of the right* – The term ‘progressive realisation’ shows that it was contemplated that the right could not be realized immediately. Further, the right “must be made accessible not only to a larger number of people but to a wider range of people as time progresses”.¹²
 - 15.3. *Within available resources* – the qualification ‘available resources’ does not require the State to do more than its available resources permit.¹³
16. It is submitted, that a programme implemented for realisation of the right to social security must ‘be balanced and flexible and make appropriate provision for attention to crises in the short, medium and long term. In this context, this means diminishing people’s exposure to risks and enhancing their capacity to protect themselves against hazards and interruption or loss of income.” The court has stated that, “measures, even if statistically successful, may not pass the reasonableness test if they fail to respond to those in desperate need.” Failure to protect children’s grants, disability grants and old age grants from unsolicited, unauthorised and unlawful deductions from beneficiaries social grant accounts is a failure of the state’s constitutional mandate to *adequately* deliver social grants.
17. The delivery of a partial grant, in the absence of the required forms of consent prescribed by the Minister of Social Development (‘Minister’) in regulation 26A of the Regulations Relating to the Application for and Payment of Social Assistance and the Requirements or Conditions in Respect of Eligibility for Social Assistance¹⁴ (‘Regulations’) is a failure to comply with section 20 of the Social

11 This position was affirmed in *Khosa v Minister of Social Development; Mahlaule v Minister of Social Development* 2004 (6) SA 504 (CC), at para 74.

12 *Grootboom*, at para 45

13 In *Khosa* (para 83) the court said that the state’s obligation in respect of sections 26 and 27 of the Constitution does not go further than requiring the state to take ‘reasonable legislative and other measures within its available resources to achieve the progressive realisation’ of the said rights.

14 GN R898 in *Government Gazette* 31356 of 22 August 2008 (hereinafter the ‘Regulations’).

Assistance Act 15 ('Act') and is an unlawful and unreasonable encumbering of the social grant. The regulation states, that "[the] Agency may allow deductions for funeral insurance or scheme to be made directly from a social grant where the beneficiary of the social grant requests such deduction in writing from the Agency." Further more regulation 26A(3) states that the South African Social Security Agency ('SASSA') may only authorise one deduction for a funeral insurance or for a funeral scheme not exceeding ten percent of the value of the beneficiary's social grant.

18. Most importantly, s20(3) of the Act provides that a beneficiary must without limitation or restriction receive the full amount of a grant to which he or she is entitled before any other person may exercise any right in respect of that amount. The Sunday Independent on 25 March 2012, for example reported that a bank contracted by SASSA to dispense grants was being investigated. The DSD spokesperson at the time, Bathabile Dlamini, said they were investigating the extent of the costs incurred by both SASSA and its beneficiaries as the bank allegedly charged additional fees despite the government paying R17.50 or more per beneficiary to cover bank charges. Various bank statements from social grant beneficiaries show monthly deductions from their social grants for bank charges.

C) RECOMMENDATIONS

19. Black Sash has shown that under international law, South African constitutional law and South African jurisprudential law the state has the obligation not only to provide social assistance but to protect social assistance from dilution. It must do so legislatively and by other means such as just administrative action, policy and practice. Legislation made pursuant to this obligation must satisfy it — it must ensure the payment to social grant beneficiaries (the class of whom should progressively increase) in full and protect the same from deductions.
20. Black Sash therefore recommends amendments to the Draft Amendments as they currently read to effect the responsibility of the state to advance social security/assistance and protect it from dilution. Our recommendations on the language of the Draft Amendment will be explained; suggested inclusions appear in ***bold italics*** and suggested deletions appear as ~~striketrough~~.

Regulation 26A(1)

21. 26A. Circumstance under which **a** deduction[s] may be made directly from **a** social [assistance] grant[s]. The Black Sash concurs with these changes as it provides clarity and indicate **a single** deduction from **a** social grant.
22. Section 26A(1) as per the Draft Amendment reads as follows:

15Act 13 of 2004 (hereinafter the 'Act').

“The Agency may allow one deduction[s] for funeral insurance or scheme to be made directly from a social grant where the beneficiary of the social grant **[requests]** or his or her representative consents to such deduction in writing and by personally submitting such request to [from] the Agency, provided that such representative shall not be a service provider concerned.”

23. Funeral Insurance or scheme

23.1. The term “funeral insurance or scheme” has not been defined in either the Act or the Regulations. Our legislative scan reveals that the phrase only appears in one piece of legislation — the Regulations.

23.2. Section 75(b) of the Long Term Insurance Act (‘Insurance Act’) provides assistance in this regard.¹⁶ While it does not define funeral scheme, it does provide that a “funeral policy” should be interpreted as an assistance policy in terms of the Insurance Act. An assistance policy has been defined in the Insurance Act as a “life policy”.¹⁷

23.3. We recommend that the term “funeral insurance or scheme” be defined or be replaced with the term that appears in the Insurance Act as the piece of legislation that governs long term insurance i.e. be replaced with the word “funeral policy”. There is need for a clear separation between a funeral insurance or scheme and life policy which is often conflated in the Long Term Insurance Act. Our understanding that Section 26A makes no provision for life cover.

24. Representative

24.1. Our first concern with the use of the word “representative” is that it is not defined in the Draft Amendments. And, our second concern is that the Draft Amendments do not set out how representative are appointed.

24.2. Section 1 of the Act is mindful of this fact and includes a definition for the word “procurator” on the following terms: “a person appointed by a beneficiary of [SASSA] to receive social assistance on the beneficiary’s behalf”. The Act also sets out the procedure to be followed for the appointment of a procurator.

24.3. We therefore, are of the opinion that the word “representative” does not serve the purpose of the Act and Regulations and therefore recommend that it be replaced with the word procurator.

¹⁶ Act 52 of 1998 (hereinafter the ‘Insurance Act’).

¹⁷Section 1 of the Insurance Act.

25. In writing

25.1. A previously mentioned, Black Sash has been working extensively on the right to social security. Black Sash is in the process of intervening in a number of different cases as *amicus curiae* to present evidence and legal arguments to the courts on the meaning of section 20 and regulation 26A.

25.2. The question of the meaning of regulation 26A has resulted in numerous court cases. A number of insurance providers are of the view that the condition that consent to deduction be given by the beneficiary of a social grant is met when that beneficiary signs a funeral policy application form to that effect. Therefore, for a number of funeral insurance providers, beneficiaries need only complete a funeral policy application form that states “allow deduction from social grant” for this to warrant consent.

25.3. This interpretation is problematic for a number of reasons. Only two will be set out here. Firstly, in our litigation, we have had sight of a funeral policy application form that does not allow the beneficiary to opt out of a direct deposit¹⁸. This calls into question the extent to which a beneficiary’s consent is freely given. Secondly, a funeral policy application form is a document that founds the relationship between the funeral policy provider and the beneficiary. It is inherently bilateral. So too, is a relationship between the beneficiary and SASSA wherein written consent from the beneficiary creates an obligation on SASSA (although whether this is true is itself questionable). One cannot take a document that founds a relationship in one context (i.e. that of funeral insurance provision) and use it to create an obligation on a non-party (in this case SASSA) without creating that obligation bilaterally (i.e. between SASSA and the beneficiary).

25.4. It is our submission therefore that the Draft Amendment clearly articulate that the written request may not be a funeral policy application form but must be in a prescribed format. The format, or form, should be included in the Draft Amendment as a separate document and can take the form of that which has since been circulated by the SASSA, which, for convenience is attached as “**Annexure A**”.

26. Personally submitting

26.1. In our opinion, the purpose for the inclusion of the wording “personally submitting” written request is to ensure that beneficiaries are not coerced into consenting to direct deductions on their social grant accounts. However, any protection granted by this provision is renounced when the consents are not signed in the presence of a SASSA official.

¹⁸ See Channel Life Urgent Founding Affidavit Annexure jr 8

26.2. We therefore submit that the written requests not only be personally submitted to SASSA but that they be filled in, signed, witnessed and commissioned at SASSA offices after SASSA officials have fully explained the effect of such deduction on a beneficiaries' social grant account to the beneficiary or procurator. It is our view that the same process be followed by a beneficiary wishing to prevent or terminate an existing regulation 26A compliant funeral policy deduction.

27. Service provider

27.1. The use of the phrase "service provider" is problematic. We opine, that the term is intended to mean an insurance company as set out in regulation 26A(2) including its underwriter and broker. This would mean that insurance companies are not permitted to be representatives of beneficiaries in terms of regulation 26A and therefore that they do not consent to deductions on social grant accounts.

27.2. However, that is not the effect of the inclusion of the phrase. The phrase "service provider" has been defined in the Regulations, at regulation 1 as "any person, excluding employees of [SASSA], rendering social assistance or providing a service for the rendering of such social assistance on behalf of [SASSA]". "Social assistance" is defined in the Act as "a social grant including social relief of distress". Together, these definitions refer to parties such Cash Paymaster Services ('CPS'). It unclear whether long term insurance service providers are included in this term.

27.3. The intent of the amendment could be met by replacing the phrase service provider with the phrase long-term insurer, which has been defined as including brokers and underwriters in the Insurance Act. In order to prevent any inconsistency with regulation 26A(2) which speaks of financial services provider, we recommended either that both phrases (i.e. financial services provider and long term insurer) be used in both sections or that financial services provider be used consistently and exclusively.

28. Concerned

28.1. The word "concerned" may render the regulation foul on the grounds of vagueness and ambiguity and does not capture the intent of the inclusion which is to prevent any *mala fide* activities. We, therefore, recommended that it be replaced with the phrase "who stand to gain financially".

29. Suggested wording of regulation 26A(1)

Option 1: Remove clause 26A(1) completely. As far as possible prevent third parties acting on behalf of grant beneficiaries without a proper legal mandate or power of attorney.

Option 2: Reformulate

“The Agency may allow one deduction for **a** funeral **policy** insurance ~~or scheme~~ to be made directly from a social grant where the beneficiary or his or her **procurator** representative consents to such deduction in writing **on the prescribed form such as Form 13 of Annexure A in the presence of Agency personnel** and ~~by personally submitting such request to the Agency~~, provided that such **procurator** representative shall not be **an official and or broker of a long term insurer as defined in section 1 of the Long Term Insurance Act (53 of 1998) or official of a financial service provider as defined in section 1 of the Financial Advisory and Intermediary Services Act (37 of 2002)** ~~a service provider concerned~~ who stand to gain financially.

Regulation 26A(2) and (5)

30. In the event that the DSD opts to use both terms “long term insurer” and “financial services provider” it should ensure consistency across the Regulations. To ensure consistency with the suggestions made to regulation 26A(1) we suggest the following changes to the wording of regulation 26A(2) and (5):

“Subject to the provisions of sub-regulation (1), the Agency may only allow deductions to be made directly from a social grant where the insurance company requiring such deduction or to whom the money resulting from the deduction is paid, is a financial services provider as defined in section 1 of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 10 2002) and authorised to act as a financial services provider in terms of section 7 of **the Financial Advisory and Intermediary Services Act** ~~that Act~~ **or a long term insurer as defined in section 1 of the Long Term Insurance Act (53 of 1998) and authorised to act as a long term insurer in terms of section 9 of the Long Term Insurance Act.**”

“Active deductions for funeral insurance or scheme from social grants excluded in terms of sub-regulation (4), may continue to be deducted from a social grant for a period not exceeding three (3) months following publication of these amendments to allow the beneficiaries and financial service providers **and long term insurers** to make alternative payment arrangements outside the Agency’s machinery and systems.”

Regulation 26A(4)

31. In our opinion, deductions should not be made from Child Support, Foster Care, Care Dependency or temporary social grants. The language used in the Draft Amendments should not sound permissive, we therefore recommend that the word “may” be replaced with the words “is not” to the following effect:

“Notwithstanding the provisions of sub-regulations (1), (2) and (3) of this

regulation, a deduction ~~is not~~ **is not** may not be permissible in respect of a foster child grant, care dependency grant, child support grant or social grant which is temporary in nature.”

32. The BS fully supports the inclusion of this clause. The option of a funeral insurance or scheme is only available to beneficiaries on state old age pension and permanent disability beneficiaries

Regulation 26A(6)

33. While we are of the view that affordability assessments should be performed before a long term insurer of financial service provider contract with the beneficiary to provide funeral insurance, the performance thereof in terms of the National Credit Act¹⁹ is limited to circumstances related to credit agreements.²⁰ Given that funeral insurance providers must be registered in terms of the Insurance Act or the Financial Advisory and Intermediary Services Act²¹ ('FAIS Act'), affordability assessment should be performed under them. They could alternatively be performed by SASSA personnel when assisting beneficiaries or their procurators to fill out a written mandate. However, on our reading, neither the Insurance Act nor the FAIS Act prescribe affordability assessment.
34. We, therefore, suggest that the wording “in compliance with the National Credit Act” be removed. However, the method adopted in performing an affordability assessment as set out in regulation 23A of the National Credit Regulations may be incorporated into the Draft Amendment.²² Enforcing an affordability assessment will have to be thought through carefully. It should be noted that in August 2015, the Minister of Trade and Industry suspended the commencement of the affordability assessment for six months. It should also be noted, that the incorporation of the affordability assessment would create a regulatory obligation for providers of funeral policies to social grant beneficiaries that does not exist for the provision of funeral policies to non-social grant beneficiaries and therefore might come under attack on the grounds of legality and rationality. Further, it would serve to expand the regulatory powers of the Minister to the realm of the Minister of Finance. In any event, regulation 23A of the National Credit Regulations of is attached, for convenience, as “**Annexure B**”.

Regulation 26A(7)

35. It is our experience that the failure to ring fence a social grant account leads to unauthorised and unlawful deductions being made from social grant accounts. It is for this reason that the request for proposals issued by SASSA, for the new tender

¹⁹ Act 34 of 2005 (hereinafter 'NCA').

²⁰ Section 4 of NCA.

²¹ Act 37 of 2002.

²² GN R489 in *Government Gazette* 28864 of 31 May 2006.

to administration of social grants, in April 2015 called for the ring-fencing of social grant accounts in manner that disallows any and all deductions, be they EFT, debit orders or stop orders.

36. Black Sash therefore recommends that deductions for funeral policies be made by SASSA prior to the transferral of social grant money into the ring fenced beneficiary account. We also submit that ring-fenced beneficiary bank account must protect the confidential data of the grant beneficiaries and disallow marketing of products/ services from particularly the credit and financial services sectors.
37. BS does not see the need for a grace period as we deem any deductions not related to funeral insurance or scheme as unlawful. However in the interest of administrative justice, a three month period, similarly to that included in section 26A (5), should be allowed for beneficiaries to make alternative arrangements.

D) CONCLUSION

38. It is clear from the foregoing, therefore, that there is a need at international and domestic level to protect social grants from unauthorised, fraudulent and unlawful deduction. We have recommended a number of means that can be adopted by DSD to ensure such protection.
39. Furthermore, BS recommends that in the medium term Section 26A funeral cover deductions be removed from the Social Assistance Act Regulations. This is on the condition that government proved a free standardised funeral benefit and secure the necessary funding from the National Treasury.

MANDATE FOR FUNERAL POLICY/SCHEME DEDUCTION

Grant Type

Identity number

Residential Address

Postal Address

I do hereby wish to have the amount of R_____ for a funeral policy, deducted from my social grant with effect from _____ (date)

Signature _____
Date _____

OR

WARRANTY

I understand that:

- this is just an application for a funeral policy but a facility for SASSA to enable a direct deduction against my grant for a funeral policy
- SASSA is not a party to the agreement between myself and the company offering the policy, with which I have signed a contract. Therefore, SASSA can not be held responsible for contents of the agreement entered into between myself and the insurance company
- The postal address provided will be used as the contact point for all written communication. Any changes will be communicated to SASSA in writing

I hereby warrant that I understand the contents of this document

Signature _____

23A Criteria to conduct affordability assessment**Application**

- (1) These Regulations apply to-
 - (a) current, prospective and joint consumers;
 - (b) all credit providers; and
 - (c) all credit agreements to which this Act applies, subject to [Regulation 2](#).
- (2) These Regulations do not apply to a credit agreement in respect of which the consumer is a juristic person and do not apply to-
 - (a) a developmental credit agreement;
 - (b) a school loan or a student loan;
 - (c) a public interest credit agreement;
 - (d) a pawn transaction;
 - (e) an incidental credit agreement;
 - (f) an emergency loan;
 - (g) a temporary increase in the credit limit under a credit facility;
 - (h) a unilateral credit limit increase in terms of sections 119(1)(c); 119(4); and 119(5) of the Act under a credit facility;
 - (i) a pre-existing credit agreement in terms of Schedule 3 item 4(2) of the Act;
 - (j) any change to a credit agreement and/or any deferral or waiver of an amount under an existing credit agreement in accordance with section 95 of the Act; and
 - (k) mortgage credit agreements that qualify for the Finance Linked Subsidy Programs developed by the Department of Human Settlements and credit advanced for housing that falls within the threshold set from time to time.

Existing financial means and prospects

- (3) A credit provider must take practicable steps to assess the consumer or joint consumer's discretionary income to determine whether the consumer has the financial means and prospects to pay the proposed credit instalments.
- (4) A credit provider must take practicable steps to validate gross income, in relation to-
 - (a) consumers that receive a salary from an employer:
 - (i) latest three (3) payslips; or
 - (ii) latest bank statements showing latest three (3) salary deposits;
 - (b) consumers that do not receive a salary as contemplated in (a) above by requiring:
 - (i) latest three (3) documented proof of income; or
 - (ii) latest three (3) months bank statements;
 - (c) consumers that are self-employed, informally employed or employed in a way through which they do not receive a payslip or proof of income as contemplated in (a) or (b) above by requiring:
 - (i) latest three (3) months bank statements; or
 - (ii) latest financial statements.
- (5) Where the consumer's monthly gross income shows material variance, the average gross income over the period of not less than three (3) pay periods preceding the credit application must be utilised.
- (6) The consumer must accurately disclose to the credit provider all financial obligations to enable the credit provider to conduct the affordability assessment.
- (7) The consumer must provide authentic documentation to the credit provider to enable the credit provider to conduct the affordability assessment.

Existing financial obligations

- (8) A credit provider must make a calculation of the consumer's existing financial means, prospects and obligations as envisaged in sections 78(3) and 81(2)(a)(iii) of the Act.
- (9) The credit provider must utilise the minimum expense norms table below, broken down by monthly gross income when calculating the existing financial obligations of consumers.
- (10) The methodology in the table requires for:
 - (a) credit providers to ascertain gross income;
 - (b) statutory deductions and minimum living expenses to be deducted to arrive at a net income, which must be allocated for payment of debt instalments; and
 - (c) when existing debt obligations are taken into account, the credit provider must calculate discretionary income to enable the consumer to satisfy any new debt.

Table 1: Minimum Expense Norms

Minimum	Maximum	Minimum monthly Fixed Factor	Monthly Fixed Factor = % of Income Above Band minimum
R0.00	R800.00	R0.00	100%
R800.01	R6 250.00	R800.00	6.75%
R6 250.01	R25 000.00	R1 167.88	9.00%
R25 000.01	R50 000.00	R2 855.38	8.20%
R50 000.01	Unlimited	R4 905.38	6.75%

- (11) The credit provider may however on an exceptional basis, where justified, accept the consumer's declared minimum expenses which are lower than those set out in table 1 provided the questionnaire set out in the Schedule, as issued from time to time, is completed by the consumer or joint consumers.
- (12) When conducting the affordability assessment, the credit provider must-
 - (a) calculate the consumer's discretionary income;
 - (b) take into account all monthly debt repayment obligations in terms of credit agreements as reflected on the consumer's credit profile held by a registered credit bureau; and
 - (b) take into account maintenance obligations and other necessary expenses.

Debt re-payment history as a Consumer under Credit Agreements

- (13) A credit provider must take into account the consumer's debt repayment history as a consumer under credit agreements, as envisaged in section 81(2)(a) and must ensure that this requirement is performed-
 - (a) within seven (7) business days immediately prior to the initial approval of credit or the increasing of an existing credit limit; and
 - (b) within fourteen (14) business days with regards to mortgages.

Avoiding double counting in calculating the Discretionary Income

- (14) Where a credit agreement is entered into on a substitutionary basis in order to settle off one or more existing credit agreement, a credit provider must-
 - (a) record that the credit being applied for is to replace other existing credit agreement/s; and
 - (c) take practicable steps to ensure that such credit is properly used for such purposes.

Disclosure of the credit cost multiple and the total cost of credit

(15) A credit provider must-

- (a) disclose to the consumer the credit cost multiple and total cost of credit in the pre-agreement statement and quotation;
- (b) ensure that the credit cost multiple disclosures for credit facilities is based on one year of full utilisation up to the credit limit proposed;
- (c) ensure that the attention of the prospective consumer is drawn to the credit cost multiple and that the cost of credit as disclosed, is understood by the prospective consumer;
- (d) disclose a total cost of credit which includes but not limited to, the following items-
 - (i) the principal debt;
 - (ii) interest;
 - (iii) initiation fee, if any;
 - (iv) service fee aggregated to the life of a loan; and
 - (v) credit insurance aggregated to the life of a loan, as set out in section 106 of the Act.

Outcome of Affordability Assessment

- (16) A consumer who is aggrieved by the outcome of affordability assessment may at any time lodge a complaint in terms of section 134 or 136 with the credit provider for dispute resolution.
- (17) The credit provider must attempt to resolve the complaint within fourteen (14) business days after receiving notification of the complaint from the ombud in terms of section 134.
- (18) If the grievance is not addressed by the credit provider within the period referred to in subregulation 10A(15) above, the consumer can approach the National Credit Regulator.
- (19) The National Credit Regulator must resolve the complaint within seven (7) business days.
- (20) If the National Credit Regulator issues a notice of non-referral in response to a complaint, the consumer may refer the matter directly to the National Consumer Tribunal, subject to its rules of procedure.