

# Legislation: Debt Relief Bill to change ‘borrowing behaviour’?

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National Treasury input this week to the process of arriving at a workable Debt Relief Bill drew attention to the fundamental importance of changing the way South Africans ‘interact with the financial sector’, reports Pam Saxby for Legalbrief Policy Watch. According to a [document](#) circulated at Tuesday’s meeting of the National Assembly’s Trade and Industry Committee, the ‘fresh start’ envisaged for SA’s ‘chronically’ over-indebted citizens should ‘pave the way for ... changed borrowing behaviour’. This means ‘saving for future expenditure rather than borrowing for immediate consumption’. Debt relief measures: cannot be allowed to threaten the stability of the country’s financial system; should support reforms already under way to ensure that credit is granted responsibly, is sustainable and facilitates economic growth and development; and ‘must not lead’ to relieved persons once again incurring debt simply to survive. Against that backdrop, the Bill’s preparation should be informed by ‘careful engagement’ on a ‘fair’ level of aggregate debt write-off that will help ‘the poorest of the poor’ without over-burdening banks, other lenders and the fiscus.

A Department of Trade and Industry [presentation](#) called for the ‘proper application’ of section 103(5) of the amended National Credit Act (the *in duplum* rule) – which could itself significantly alleviate the plight of defaulting consumers. Read with sections 101(b) to 101(g) – dealing with the cost of credit – section 103(5) seeks to ensure that amounts accruing in this regard while a consumer is in default do not, in aggregate, exceed the unpaid balance of the principal debt under the credit agreement concerned. Noting that ‘unscrupulous’ credit providers and debt collectors (including attorneys fulfilling that function) are ‘deliberately circumventing’ these provisions – the document referred the committee to related clauses in a Debt Collectors Amendment Bill apparently still being drafted. The *in duplum* rule is not always interpreted correctly, while ‘enforcement issues’ have left ‘ordinary consumers’ vulnerable to charges ‘way beyond what is legally acceptable’.