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DEBT AMNESTY DOUBTS

An impact study of the new National Credit Amendment Act outlines how the law could backfire on consumers, with some unintended harmful consequences

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If there were ever an example of a good intention gone awry, the new National Credit Amendment Act must surely be it.

The act was developed with the aim of aiding poor and overindebted consumers. Specifically, it targets those earning R7,500 or less and who owe a maximum of R50,000 in unsecured credit, but who are unable to access debt review mechanisms, such as debt counselling, because these are generally considered too costly.

Instead, it will be a potentially devastating blow to the financial inclusion of almost 12-million people. And, to add insult to injury, it's likely to boost the informal credit market – ruled by "mashonisas" and loan sharks – by a hefty R7.6bn, as low-end consumers, locked out of the formal credit market, look for alternatives.

These are just some of the findings of a socioeconomic impact assessment study (SEIAS) of the possible effects of the legislative amendment, commissioned by the department of trade & industry (DTI) and conducted by consultancy Genesis Analytics.

Yet parliament passed the new law before any MPs had sight of this arguably crucial document. (The study was still under way in March, when the bill was passed by both houses of parliament.)

After President Cyril Ramaphosa signed it into law in August, he said a SEIAS had not been required, as the bill emanated from the trade & industry portfolio committee; it was not brought to parliament by the executive.

He also argued, in reply to DA MP Dean Macpherson, that he could find "no constitutional defect" with the law.

But the unintended consequences that the study highlights are not minor. In fact, the Genesis report went so far as to recommend that parliament reconsider its passage.

Genesis outlines two possible scenarios around implementation of the act: a high-uptake scenario and a more likely baseline scenario. Under the baseline scenario, the consultancy estimates that about 306,482 consumers, with outstanding credit of about R2.4bn, are likely to be accepted into the initial debt intervention process. Of these, an estimated 85,815 consumers will qualify, after all other interventions have been exhausted, to have their debt expunged – an outstanding book value of R687.2m.

Though a portion of credit consumers stands to gain from the law, Genesis's main conclusion is that the impact is "net negative for SA society and the economy", particularly the 11.7-million consumers earning less than R7,500 who use credit responsibly.

In particular, the report flags the long-term effect of splitting the credit market into two risk profiles at the R7,500 income mark, with those earning below this considered high risk, and those earning above it considered low risk. "This is particularly worrisome for financial inclusion," Genesis says.

It is not expected that credit providers will stop lending to the "low-risk" market, as it accounts for 54% of total credit consumers. But Genesis argues that formal credit providers will adjust their lending patterns to the perception of higher risk created by the debt intervention process. This will be compounded by "low levels of trust in the capacity of the [National Credit Regulator, or NCR] to undertake the process efficiently and fairly".

What it means:
While critics say the new law is unworkable, proponents believe the worst effects can be mitigated

The study estimates that the net result will be a R12bn or 17.9% decline in formal credit extended to the target group. About 60% of this R12bn hole is likely to be filled by mashonisas in the informal credit market, because much of the demand for credit in this market segment is nondiscretionary, and the informal sector is popular and easily substitutable for formal services.

This will leave consumers far worse off – "exposed to usurious rates of interest and illegal methods of collection", in Genesis's view.

To further complicate things, the study expects that the NCR and National Consumer Tribunal will require an additional R407m to implement the law. This at a time when the fiscus is under immense strain and government departments are looking for ways to cut spending.

Given these findings, the DA's Macpherson – who criticised the ANC for forcing the law through parliament ahead of the election in May – questions how the act can feasibly be implemented.

"If you want to implement something that

is so fatally flawed and that is going to make loan sharks a multibillion-rand industry, we've got a real, real problem," he tells the FM. "You can't implement something that ... is going to drive up the cost of credit, not only for indebted people, but for anyone [in] this income bracket."

Though no implementation date has been set, some of the problems that have been flagged are already manifesting.

Capitec, for instance, announced recently that it has effectively reduced lending to the targeted class of consumer to the point that the segment makes up less than 5% of the bank's book.

Clothing retailers that provide credit have also been critical.

Edcon CEO Grant Pattison, for example, has called the legislation "somewhat impractical" and unnecessary, given existing debt review mechanisms. He also suggests that, as a committee-driven process, the bill may have had "somewhat of a political motive as opposed to a more practical one".

But Matthew Parks, parliamentary co-ordinator for trade federation Cosatu, which has long advocated for the reforms, says such criticism is "unfair", given that work began on the bill three years ago – long before the 2019 elections.

However, he acknowledges that it is "unfortunate" that the DTI, which was involved in the parliamentary process, did not do the SEIAS earlier.

Industry stakeholders such as the Banking Association SA (Basa) are counting on discussion with the DTI to ensure sanity prevails.

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Dean Macpherson

Basa MD Cas Coovadia says the association will be meeting the DTI in the hope that implementation can be delayed, or that the damage can be limited through regulation. The industry is also hoping that, at some point, further amendments will be taken to parliament.

Asked whether the act should not simply be rescinded, Coovadia says: "That would be the ideal ... But let's work within the politics of the possible. At the very least we'd want to engage with the DTI to say: 'Look, delay the implementation, let's look at what the possibilities are of taking amendments to parliament.'"

Duma Nkosi, the new chair of the trade & industry portfolio committee, is more sanguine about the potential fallout. He says parliament was aware that the SEIAS would possibly be completed after the legislation was passed, but it takes the view that the study can be used to guide the way in which the act is implemented.

The study does recommend that certain steps be taken in the event the law has been passed as is. These include, critically, that there be "clear communication to consumers on who qualifies for debt intervention ... and the financial consequences for debt intervention and extinguishment".

"The programme should not be promoted as a debt forgiveness amnesty," the Genesis report says.

It also recommends that the state, through the NCR, should do more to enforce the law when it comes to unregistered and illegal credit providers.

There are other fail-safe mechanisms. For example, the act allows the minister of trade & industry to review the intervention measures after three years of implementation "to ensure that some of the unintended consequences identified in the study are mitigated against", says Nkosi.

But that doesn't sit well with everyone. At least one critic argues that the conversation needs to centre on rectifying the act "quickly", rather than trying to implement something that will be "systemically dysfunctional".

HEAVY BURDEN

The cost of debt intervention

	Year 1 costs*	Genesis baseline estimate (102,161 cases in year 1)
National Credit Regulator	R126.9m	R375.9m
National Consumer Tribunal	R20.6m	R31.7m
Total cost to fiscus	R147.5m	R407.6m

* Based on submissions from the National Credit Regulator and National Consumer Tribunal
Source: Independent Impact Assessment of the National Credit Act Amendment Bill, 2018, Genesis Analytics

However, DTI spokesperson Sidwell Medupe says that while the SEIAS raises a number of concerns, it suggests the steps that should be taken to address these, including strengthened enforcement, better communication and improved oversight of the NCR.

He also notes that the regulators have disputed the estimated costs given in the study.

The department says the implementation plan will need to take account of available resources, and the costs could be reduced through a careful implementation plan.

Trade & industry minister Ebrahim Patel has also committed to meeting with the financial sector and other credit providers, to develop a plan to implement the law "in a manner that maximises the benefits to the poor and minimises the risks identified in the SEIAS", says Medupe. x

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