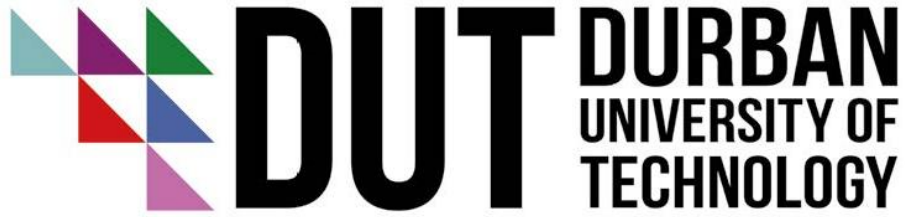


**DURBAN UNIVERSITY OF TECHNOLOGY**

**UNFAIR CREDIT PRACTICES, BORROWER  
CHALLENGES AND RISKS, AND THE ROLE OF  
THE NATIONAL CREDIT ACT IN THE ETHEKWINI  
METROPOLITAN AREA**

**LUNGELO PERCIVAL ZULU**

**APRIL 2023**



**UNFAIR CREDIT PRACTICES, BORROWER CHALLENGES AND RISKS, AND  
THE ROLE OF THE NATIONAL CREDIT ACT IN THE ETHEKWINI  
METROPOLITAN AREA**

Submitted in fulfilment of the requirements of the degree of

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Specialising in

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Date

## Declaration

I, Lungelo Percival Zulu, declare the content of this dissertation represents my own, unaided work, and the dissertation has not previously been submitted for academic examination towards any qualification. Furthermore, it represents my own opinions, ideas and not necessarily those of the Durban University of Technology. I further declare all sources cited or quoted are indicated and acknowledged by means of a comprehensive list of references.

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Lungelo P. Zulu

**31 March 2023**

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Date

## **Abstract**

The South African government enacted the National Credit Act No. 34 of 2005 (NCA) primarily to increase consumer access to credit markets, protect consumers from unfair credit and credit-marketing practices by credit providers, promote a fair, accessible marketplace, and establish national norms and standards relating to consumer protection, as well as reduce consumer over-indebtedness. Consequently, credit providers are obligated to adhere to strict rules and regulations when determining a credit consumer's affordability prior to granting home loans.

Given the importance of the NCA and the absence of support consumers received from the previous Usury Act No. 73 of 1968 and the Credit Agreements Act No. 75 of 1980, this research seeks to investigate unfair debt practices, challenges and risks experienced by borrowers in connection with unpaid debts, and the role and strategies of the NCA in addressing such challenges and risks.

The study employed a quantitative research method. Respondents (credit consumers) completed a survey questionnaire (hardcopy or online) by indicating their credit perspective in terms of unfair credit practices encountered within the market; challenges when trying to access credit; risks in connection with unpaid debts; and the strategies of the NCA to prevent such challenges and risks; along with awareness of the Act. The data strongly suggested borrowers encountered multiple challenges and risks, as a direct result of unfair credit practices by providers. An overall analysis revealed borrowers are unclear regarding the NCA and its provisions. However, findings revealed the NCA does play a significant role in regulating the South African credit market. Prior to enactment of the Act, only a percentage of low- and middle-income groups had access to credit; to ensure equal access, a formal, accessible credit market had to be established.

## **Dedication**

I dedicate this work to my beautiful twin babies, Ayabonga and Luyanda, to never stop believing. I also dedicate this to the memory of my late father, Mr. Bongani Zulu, who always ensured that I strived to develop myself academically.

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## Abbreviations and Acronyms

BASA	-	Banking Association of South Africa
CAFCOM	-	Consumer Affairs Committee
CBA	-	Credit Bureau Association
DCASA	-	Debt Counsellors Association of South Africa
DTI	-	Department of Trade and Industry
DUT	-	Durban University of Technology
FICA	-	Financial Intelligence Centre Act No. 28 of 2001
GDP	-	Gross Domestic Product
IMF	-	International Monetary Fund
IREC	-	Institutional Research Ethics Committee
KZN	-	KwaZulu-Natal
MFRC	-	Micro-Finance Regulatory Council
NCA	-	National Credit Act No. 34 of 2005
NCAB	-	National Credit Amendment Bill
NCR	-	National Credit Regulator
NCT	-	National Consumer Tribunal
NDA	-	National Debt Advisors
NDMA	-	National Debt Mediation Association
NLR	-	National Loans Register
PDA	-	Payment Distribution Agency
POPI	-	Protection of Personal Information
POPIA	-	Protection of Personal Information Act No. 4 of 2013
SA	-	South Africa
SARB	-	South African Reserve Bank
SPSS	-	Statistical Package for Social Sciences
TCOC	-	Total Cost of Credit
YoY	-	Year-on-year

# **CHAPTER ONE**

## **INTRODUCTION AND OVERVIEW OF THE STUDY**

### **1.1 Introduction**

Over the last four decades, the credit market has evolved significantly on a political, economic, social, and technological level, and the regulatory measures in place have become obsolete. As a result, and due to growing concerns raised by consumer representatives with regard to the effectiveness of the existing consumer credit law, particularly regarding the protection of low-income borrowers, there was a need to reform the consumer credit law (Goodwin-Groen and Kelly-Louw 2007: 2).

The National Credit Act No. 34 of 2005 (NCA) was formulated in response to this need for reform. A proclamation was signed to implement the act in three stages, providing creditors time to set up their financial systems, contract documents, and other forms, as well as complete their registration as credit providers. The purpose of the NCA was to create a single system to regulate the granting of credit in South Africa (SA), replacing both the Credit Agreements Act No. 75 of 1980 and the Usury Act No. 73 of 1968 (Renke, Roestoff and Haupt 2019). The NCA bears little resemblance to its predecessors (Otto and Otto 2010). This makes it crucial to understand what role the NCA plays in regulating unfair credit practices, as well as the challenges and risks the borrower faces in the credit market.

### **1.2 Background**

Over the years, there has been a gradual decrease to 24.5 percent (fourth quarter (Q4) 2020) in reckless lending in the credit market of SA., which follows the 29.5 percent and 24.2 percent of 2019 and 2018 (SARB 2021: 1), according to results published by the National Credit Regulator (NCR) for Q4 2020. This was caused by limitations to reckless lending that were brought by the introduction of the NCA (Bimha 2014: 179). Business Tech (2020: 1) contends up to 27 percent South Africans used to depend on money lenders for credit, without the protection of legislation, before the NCA was passed. These loans were provided at high interest rates consumers would be unable to repay, while they cater for their basic household needs.



Renke *et al.* (2019: 230) stated the NCA was created to protect consumers by prohibiting certain unfair credit and credit marketing practices, as well as to promote responsible credit granting and use. According to Kelly-Louw (2015: 8), despite the effects of the recession on the South African economy, South African Reserve Bank (SARB) and NCR statistics show consumer spending remains high. Many consumers have become over-indebted, through increased consumer spending, as demonstrated by the larger customer base that requested debt review, based on the NCA (Coetzee and Roestoff 2012).

Prior to the NCA, the Usury Act No. 73 of 1968 (hereinafter the Usury Act), Exemption Notices to the Usury Act (hereinafter “Exemption Notices”) and Credit Agreements Act No. 75 of 1980 (hereinafter the Credit Agreements Act) were in use, and regulated the consumer credit market in SA, even though they were inconsistent with each other. As described in the preamble of the Usury Act, the law aimed to limit and disclose finance charges levied for money lending, credit transactions and lending transactions, as well as for matters incidental thereto, and repeal the Usury Acts of 1926 and 1968 (SA, Department of Trade, and Industry (DTI) 2010: 4). Upon termination of a credit agreement, a credit grantor may collect certain goods in possession of the receiver, should the credit receiver terminate the credit agreement under the Credit Agreements Act.

Sewnunan (2014: 2) argued the inconsistency created by these two acts (the Usury Act and the Credit Agreements Act) undermined the regulation of consumer credit, which made it easy for consumers to access credit, without being subjected to affordability testing. Credit providers took advantage of this and granted consumers substantial amounts; even to applicants who could not repay debts as they were due (Anon. 2020: 15). These credit agreements were provided with high interest rates, hiked initiation and services costs, to the benefit of credit providers (Scholtz *et al.* 2008: 62). A prompt intervention by government was necessary to curb the over-indebtedness consumers found themselves in, by promulgating the NCA (Anon. 2020: 1).

The need for consumer legislation originated from the fact that there was no effective consumer legislation prior to the introduction of the NCA in SA. Unfair business practices are forbidden or restricted under the Consumer Affairs (Unfair

Business Practices) Act 71 of 1988, although there was no list of these practices to define them. The statute gave the Consumer Affairs Committee (CAFCOM) jurisdiction and mandated it provides reports to the Minister of Commerce and Industry. When the minister believed a business conduct was genuinely unfair, the minister would issue a notice in the government gazette making it a crime. As a result, businesses could not disregard such notifications. While the statute called for harsh measures, its implementation was restricted. In addition, neither the Act nor the committee had the power to compel a company that has defrauded the borrower through an unfair practice, to pay damages to the victim. For the customer who complained, this is undoubtedly difficult to comprehend. As a result of the inquiry, a customer would obtain a refund of the purchase price, but no damages were reimbursed (Fisher-French 2015: 1).

According to the South African Department of Trade and Industry (DTI) (2019: 1), the NCA was introduced with the aim to create a fair and non-discriminatory consumer credit marketplace, regulate credit, empower black individuals, and prohibit unfair practices, while also promoting responsible credit granting, and establishing a consistent enforcement framework. The NCA also proposed establishment of the NCR and the National Consumer Tribunal (NCT), repealing previous legislation and addressing related incidental matters. The NCA of 2005 was established with the aim of providing one set of rules for all credit activities, as well as ensuring every credit product is treated the same by all credit providers, preventing reckless lending. The Act would assist over-indebted consumers to reduce debt, ensuring consumer protection, introduce the NCT as an adjudicator in matters related to the Act, establish a credit regulator who controls the entire credit market, and introduce new and improved consumer rights (South Africa, Department of Trade and Industry 2007: 2).

### **1.3 Problem Statement**

The Credit Ombudsman (2020: 1) reported the NCR was investigating many credit industry providers for illegally providing credit insurance to their customers. The credit providers quoted this credit insurance with each initial loan application, and it was usually at a higher interest rate than usual. According to Jus (2013: 5), credit insurance is an insurance policy that protects suppliers of goods and services, who

are in credit or deferred payment terms, against non-payment risks by their customers or debtors or their eventual guarantors.

Upon investigation, the Credit Ombudsman revealed a number of issues that required intervention, such as the cost of credit not being properly disclosed and the consumer credit insurance coverage not meeting the needs of the target market (Credit Ombudsman 2020: 2). For example, selling retrenchment and disability benefits to pensioners and self-employed customers - protection these customers do not need and cannot claim for. In other cases, consumers were unaware they were paying for credit life insurance and thus unaware their credit life insurance would only take effect after their death, disability, or retrenchment (Mohan 2020: 14). Claims on credit insurance were further stated by Mohan (2020: 14) to be extremely low, indicating few people were aware they have credit life insurance or how to make a claim. As Alexanderson (2021: 1) explains, some credit applications were denied without asking the borrower regarding combined household income or even other income the borrower might have.

Arye, Eckel and Wichman (2011: 175-185) stated consumers were unaware having no or a limited credit history can cause issues, such as having negative information on their credit history. As a result, credit applications were denied based on this and other factors, such as when providers were not taking combined household income into consideration, applying the correct affordability assessment, or denying applications where fraud or identity theft is suspected. After eventually being granted credit, it is important for consumers to always be up to date with repayments (Kollali, Hacikura and Gupta 2021: 2) or they run a risk of reduced chances of receiving credit in the future, increasing the cost of credit, and even affecting job opportunities, particularly when a borrower works in a financial job that requires them to deal with cash responsibly.

A credit provider can also seek a court judgment, which is a more serious course of action. When a legal summons is issued and a consumer does not defend it or pay the amount claimed, the court grants a judgement and it remains on the consumer's credit report for five years, or until it is paid in full or the court grants rescission (Ashley 2015: 11). Considering the importance of the NCA in SA's credit industry, the researcher sought to investigate unfair debt practices, challenges and risks

faced by borrowers, in connection with unpaid credit, and the role played by the NCA in regulating such practices, challenges, and risks.

#### **1.4 Aims and Objectives**

The aim of the study was to investigate unfair debt practices, borrower challenges, and risks in connection with unpaid debts, and the role the NCA plays in regulating such practices in the eThekweni Metropolitan area in the KwaZulu-Natal (KZN) province of SA.

##### **1.4.1 Specific objectives**

- To investigate unfair credit practices in the eThekweni Metropolitan area of KZN.
- To investigate challenges and risks faced by borrowers in the eThekweni Metropolitan area of KZN, in connection with unpaid debts.
- To examine the NCA role and strategies in addressing unfair credit practices, borrower challenges and risks.
- To raise borrower awareness regarding NCA provisions.

#### **1.5 Significance of the Study**

To date, studies in the eThekweni metropolitan area of KZN focused on how the NCA impacts home loans, repossession of assets, and lending sales, along with perceptions of the NCA, to name a few. However, these studies have not investigated unfair debt practices, challenges, and risks experienced by borrowers in connection with unpaid debts. This study, therefore, makes a significant contribution towards expanding knowledge of the NCA and determining its assistance in regulating unfair credit practices, challenges, and risks in connection with unpaid debts, in addition to examining the strategies and role of the Act in addressing such challenges and risks.

Findings from this research will provide the NCR with imperative information that could address issues of unfair credit practices, reckless lending, and consumer indebtedness. First-time credit consumers will gain knowledge to be mindful of unfair credit practices executed by providers. The study will also educate consumers on affordability and credit risk assessment procedures, as well as assist government officials and policymakers with informed credit market decision-making.

## **1.6 Research Methodology**

The research approaches employed are introduced in this part of the research. This includes the techniques utilised for collecting data and data analysis, with the research instruments also described in this section.

### **1.6.1 Research design**

A quantitative research method was employed, as the study emphasis was on the collection and analysis of quantitative data. This method allowed the researcher to quantify behaviours, attitudes, and other variables, and to generalise from larger populations (Creswell 2013: 14). Furthermore, this method employed quantifiable data to express facts, uncover patterns, and comprehend relationships between independent and dependent variables in a population (Creswell 2013: 212). This research method is thus suitable, because it helped uncover and quantify challenges borrowers experienced in connection with unpaid debts and debt practices within the eThekweni metropolitan area. A quantitative method enabled the researcher to effectively test the tax theory, using tax brackets and tax rebates as instruments, as well as the number of respondents who defaulted on repayments, were under administration or blacklisted.

The study utilised a convenient sampling method to identify 208 survey respondents within the eThekweni Metropolitan area. Face-to-face interviews were conducted weekly over the course of a month. Survey questionnaires were also made available through Google forms, where respondents were sent a letter of information and consent, along with a link to complete the questionnaire.

### **1.6.2 Area of Study**

This study was conducted in the eThekweni area of the KZN province, SA. eThekweni, also known as Durban, is a city on the east coast of SA and fronts the Indian Ocean (Durban Tourism 2021: 2), with a population of 3 176 254 (World Population Review 2020). A combination of low and middle-income neighbourhoods makes up the city, which is bordered by Umhlanga Rocks in the North and Amanzimtoti in the South, two high-income communities. The city prides itself on a diverse ethnicity of all age groups and cultural richness of mixed beliefs and traditions. People of Zulu ethnicity are the largest cultural group in the city, while there are also those of Indian and British descent (Durban Tourism 2021: 2).

There are several reasons eThekweni was selected as study area. It is the economic hub of the KZN province, with figures reported by the Department of Statistics South Africa (2021: 76) showing eThekweni is responsible for R16 of every R100 generated by the national economy. Earlier studies in this area focused on how the NCA impacts home loan affordability and repossession of assets, to name a few, but none examined the role played by the NCA to regulate unfair credit practices. EThekweni is home to different racial groups, where diversified findings accommodate everyone. According to the NCR (2019: 4), eThekweni is a place in KZN with a significant number of reported cases related to unfair credit practices.

### **1.6.3 Target population and sample**

The target population is described as the population to which the researcher wishes to generalise the study results. Involving all members of the population in a research project is, however, usually impractical and uneconomical (Welman, Kruger and Mitchell 2011: 47). As a result, reliance is placed on data obtained from a sample of the population. The target population comprised those people that reside and work within the eThekweni metropolitan area, as the scope of the study was limited to this area. They were recruited by confirming they are eThekweni metropolitan area residents. Should they be residents, they were formally asked to participate.

With the population of the eThekweni metropolitan area at 3 176 254 (World Population Review 2020), Calculator.net was used as a sample size calculator, with a sample size of 208 respondents needed to achieve a 90 percent confidence level with a margin of error at plus or minus five percent. According to Mancillas (2020: 140), 90 percent is one of the most common confidence levels in survey research.

A non-probability sampling method was used with a convenience sampling technique as sampling data method, using a sampling frame of respondents aged older than 18 years, who had made use of credit before or had an active credit account. With this sampling method, respondents conversant with the topic were selected, based on their willingness and availability to participate (Creswell and Gutterman 2019: 143).

The sample can provide useful information for addressing questions and hypotheses. This sampling method was appropriate for this study because data are easy to collect from respondents selected through convenience sampling, since only

willing and available respondents are chosen; it is also inexpensive, thus, suitable for this research, which has a limited budget. Equal samples were taken from all tendencies and variables to ensure representativity of samples and eliminate sampling errors.

#### **1.6.4 Data Collection and Analysis**

This study used primary and secondary data. Generally, primary data are collected by the researcher, while secondary data are obtained from existing sources, according to Sekaran and Bougie (2010). Secondary data were collected from the following websites: the SARB, the NCR, the DTI, and the World Bank, as well as the International Monetary Fund (IMF), and other local and international financial organisations.

Primary data were collected from borrowers that reside and work within the eThekweni area, via a survey questionnaire or online through Google forms, during weekdays and on weekends until the maximum of 208 was reached. When they agreed to participate, participants were asked whether they wished a hard copy survey questionnaire or the online version on Google forms. For Google forms, they were sent a link to complete the online survey questionnaire but were first required to read the letter of Information and Consent and agree to participate in the study. It took respondents approximately 10-20 minutes to complete the survey questionnaire, both in hard copy and online.

Survey questionnaires were used as a method of collecting primary data, because it is economical in time, effort, and cost for both sender and respondents. These questionnaires can be accessed by a wide range of respondents, with rapidity in receiving responses and ensuring anonymity, particularly on sensitive and ego-related questions. Online Google forms put less pressure on respondents for an immediate response; unlike an interview or observation, they can respond at their own convenience.

Using the letter of information and consent in English or IsiZulu, the researcher explained the study aims and objectives to the respondents, indicating it was their choice and willingness to participate and complete the survey questionnaire. The data collected were analysed in part by the researcher, with a statistician employed to further analyse and interpret the collected data, particularly in areas where the

researcher did not generate analysis. A cross-tabulation technique was used as a data analysis method. Cross-tabulation is a method of quantitatively analysing the relationship between multiple variables (Human Data 2021). Under this method, data tables were used to group related variables together. These data tables not only showed the results of the survey but also the results of the subgroups, which were key in testing the tax theory, since there are tax rebates involved, depending on an individual's income bracket. Cross-tabulation makes it easier for researchers to identify patterns and trends and eliminate confusion when interpreting data; it clearly describes the relationship between categorical variables, and researchers can obtain better and deeper information (Human Data 2021: 1).

#### **1.6.5 Validity, Reliability and Confidentiality**

Mouton (2012: 100-102) suggested a research design be tested for validity and reliability, with Paparas (2019) stating study validity is determined by how well it measures what it claims to measure. In the current study, the validity of quantitative data sample analysis was examined using factor analysis. Bryman (2011: 315) explain factor analysis is a statistical tool used to establish whether there is a variable interrelatedness tendency and, should this be the case, these variables are grouped together.

Reliability refers to the consistency of measurements made, therefore, repeating the same experiment, under the same conditions, will generate the same measurements (Goddard and Melville 2007: 37). For this study, internal consistency reliability was employed, deemed suitable for this study, as the researcher was able to determine credit tendencies and properly test the tax theory.

The survey questionnaire was pilot tested for validity and reliability to anticipate difficulties in answering questions, identify unclear or ambiguous terms, and determine whether there was room for improvement. In addition, to ensure quantitative data validity, statistical analyses were performed using factor analysis.

To maintain maximum confidentiality and anonymity, questions and survey questionnaires did not require respondents to state their names or any information that could be used to identify them or their script. The scripts will be kept in a locked safe where only the researcher will have the key and will be shredded after a period



of five years. The information provided by respondents was only used for research purposes.

#### **1.6.6 Pilot of the study**

Creswell and Guetterman (2019: 399) stated the research should be pilot tested to ensure the individuals in the sample can complete the survey and understand the questions. According to Chaudhary and Israel (2017: 2), pilot testing is conducted to evaluate the entire survey questionnaire under actual survey conditions. The primary advantage of pilot testing is it allows the researcher to identify problems before starting the full survey. As part of pilot testing, questions are evaluated for validity and analysed to determine whether they capture the information intended to be measured to meet the study objectives.

There is no set sample size for pilot research (Sudman 1983: 145-195). Researchers have suggested sample sizes ranging from 5-10 to 0-20 (Sheatsley 1983: 95-230) but the ultimate sample size choice for a pilot is decided by the researcher, depending on the time and resources available to do the test run. The pilot sample size for this study consisted of 15 respondents. The researcher believed 15 respondents were sufficient, considering the cost of conducting research. For the pilot study, respondents were approached directly by the researcher in the eThekweni central business district (CBD), following strict COVID-19 safety measures of two-meter social distancing and sanitising of hands. The decision to participate in the pilot study was made based on the respondents' availability and willingness.

#### **1.7 Proposed Dissertation Structure**

Chapter One provided the study background and research area. Additionally, this chapter set out the problem statement, aims and objectives, significance of the study, and its limitations, as well as the research assumption and methodology to be used.

Chapter Two offers a definition of key concepts relevant to the chapter and study and provides background on SA's credit market. Legislations that governed the credit market before the introduction of the NCA are also discussed. The chapter then provides detailed literature on the current state of the credit market, examines

relevant theory, and explores existing measures and stakeholders to deal with unfair credit practices and borrower challenges.

Chapter Three outlines in detail the research methods used. The research design, methodology, population, as well as data collection, and response rate are all covered. Furthermore, the researcher explains the choice of a quantitative research approach, along with a discussion of research credibility and research validity.

Chapter Four presents a synopsis of the merged findings and discusses these in light of the evidence data collected from the survey questionnaires. The results are presented in tables, charts, and graphs.

Chapter Five furnishes a conclusion and key recommendations based on the findings of the researcher. Every objective is outlined with an assessment of the extent to which the objective was realised. The study concludes with an assessment of its limitations, along with suggestions for future research.

## **1.8 Conclusion**

The purpose of this chapter was to provide an introduction and background to the study, in order that the reader understands its importance, motivation, and focus. The research problem and purpose of the current study informed the research objectives and questions. An outline of the research methods used to complete the study was also provided. Chapter two offers a detailed literature review on unfair credit practices and borrowers' challenges.

## **CHAPTER TWO**

### **LITERATURE REVIEW**

#### **2.1 Introduction**

Chapter two provides a detailed literature review encompassing the credit industry history of SA and the legislation that used to govern the credit market, factors that led to promulgation of the NCA, and unfair credit practices, as well as challenges and risks related to unpaid debts, along with the NCA background. The NCR and NCT are examined, in addition to the institutional impact by the NCA. In addition, the chapter examines the theory adopted for this study, namely tax theory, and explores existing measures in place and institutions mandated to ensure fair credit practices and address borrower challenges. The chapter commences by defining key concepts regarded as important for the study purpose, to assist the reader in understanding their relevance and applicability to this research. An examination of borrower awareness with regard to the Act's provisions, and the current state of SA's credit market concludes the review of literature discussed in this chapter.

#### **2.2 Definition of Terms**

Definitions of the key concepts deemed important for the purposes of this study are presented below:

##### **2.2.1 Credit market**

Cronje (2010: 215-225) defines credit markets as markets where governments, businesses, and entrepreneurs seek to raise funds through debt insurance. Among the securities that can be issued are investment-grade and junk bonds, as well as commercial papers with low credit ratings. Securities found in a credit market include offerings such as collateralised debt obligations and mortgage pools. According to Vaidya (2020), there are primarily two types of credit, short- and long-term. The former is used to finance shortage of cash, such as paying off credit card, bank overdraft, trade facility, and payday loans, while the latter is used to meet capital expenditure needs such as purchasing homes and buying cars.

Credit plays a significant role in the lives of consumers who may want to purchase cars, homes, invest in business start-up or pay up other debts beyond their affordability (Kelly-Louw 2015 2). This echoes the description by Grove and Otto

(2002: 1), who referred to credit as a trade practice in which goods or services are supplied to a receiver, with the agreement the receiver would pay for them later.

Delayed payment is an appealing feature of credit because it allows consumers to obtain resources without depleting their bank account. This factor is particularly appealing in SA, where consumers are living in poverty (Adewale 2014: 370). Van Rooyen, Stewart and De Wet (2012: 2249-2262) argued credit encourages materialistic spending and leads to unnecessary debt. In addition, credit has also been viewed as a tool for financial empowerment, allowing consumers to fulfil their immediate desires (James 2014: 55). However, the attraction of unrestricted consumption and rising debt levels has necessitated some form of regulation (Adewale 2014: 368).

### **2.2.2 Unfair credit practices**

Shelembe (2006) stated a practice is unfair when it causes harm to consumers or has a high likelihood of doing so, when customers cannot prevent that harm, and when the benefits to consumers or competition cannot offset that harm.

### **2.2.3 Borrower or consumer**

A borrower is a person or business that receives money from a lender, with the commitment to return it within a defined time (Truter 2016: 1). As explained by Walters (1974: 4), a consumer is a person who makes a purchase or has the financial means to make a purchase of products and services offered for sale by marketing organisations to satisfy their personal requirements, wants, or desires or those of their family. From these definitions, Shelembe (2006: 2) stated borrowers are recognised as consumers in the credit market, as they purchase goods and services sold by providers in the form of loans.

### **2.2.4 Credit provider or lender**

A credit provider is a person who lends money to customers and is regulated by the Financial Sector Behaviour Authority (FSBA), an independent agency responsible for monitoring credit providers' conduct (Shelembe 2006: 3).

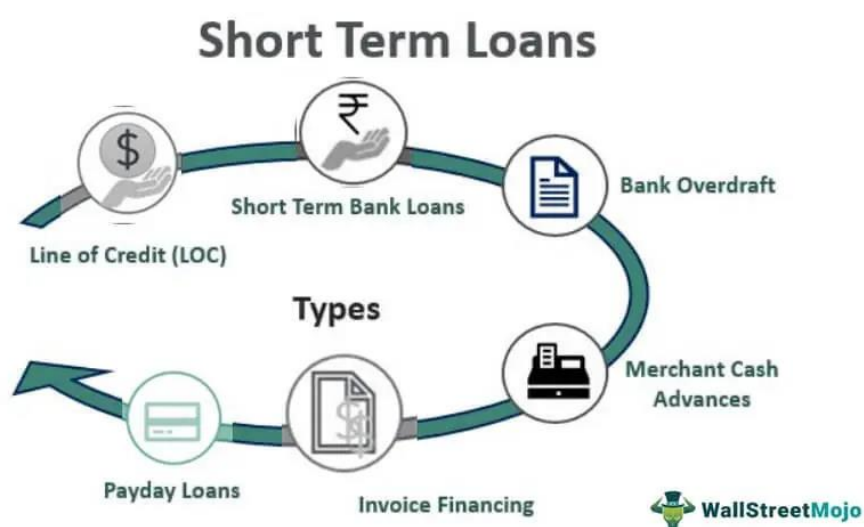
### **2.2.5 Credit or debt**

Credit, according to Shelembe (2006: 3), is the capacity of a client to purchase products and services without making a payment, with the agreement a subsequent payment will be made. Howard (2022: 1) added credit is when a borrower receives

money or something else of value and agrees to pay the lender back with interest in the future.

### 2.2.6 Short-term credit

Depending on the nature of loan, short-term credit varies from six to 12 months in duration, while others have terms of 12 to 24 months. Most short-term loans are unsecured, since there is no property that may be auctioned to recoup the debt, should the borrower default. Due to this, candidates with excellent credit score are given preference. Figure 2.1 illustrates examples of short-term credit.



**Figure 2.1: Short-term credit**

**Source: Wall Street Mojo (2021: 7)**

- When people require money urgently, a short-term loan addresses this need. Individuals and businesses are able to, on the one hand, borrow money from banks, credit unions, and other financial institutions to cover their daily expenses.
- Short-term bank loan credit has a predetermined expiration date. The borrower may need to submit a new credit application should they want to borrow again. A personal loan to finance a wedding is an example.
- A line of credit, or revolving credit, allows a borrower to borrow a maximum amount in one lump sum or in instalments, determined by their creditworthiness (Hawkins 1982: 59-81).

- The most common type of credit facility is a bank overdraft, where the bank covers the difference between the amount a customer wants to withdraw and the amount they have in their account (Sindhu 2012). Banks often demand astronomically high rates of interest in return for lending money in this fashion.
- Merchant cash advances are appropriate for businesses with a high volume of credit/debit card sales, as opposed to cash sales. A financial institution agrees to advance a lump-sum amount to the borrower under this facility (Kilian and Nel 2015: 415-425). This money is subsequently recovered by the lender as a proportion of the borrower's daily sales.
- Invoice financing is a facility used by companies to borrow money from a bank or financial institution, in exchange for money owed to it by customers (Guerar *et al.* 2019: 1-6). In this regard, when customers take their time paying their bills, a company can borrow to meet its liquidity needs in the interim; lenders charge an invoice financing fee, which is deducted from the loan amount. In addition, receivables can be used as collateral, allowing the bank to rely on them should the borrower default.
- Payday loans, according to Stegman (2007: 169-190), are determined by the borrower's earnings, usually as a percentage of their earnings. Repayment is due when the next pay cheque or income is received.

### **2.2.7 Long-term loan**

Long-term loans are those whose payments are spread out over an extended period, for example two to 30 years. Prominent examples of long-term loans are discussed below.

- Home loan terms are much longer than two years, and the loan amount is substantial. If a borrower fails to repay the loan, the home or property purchased is used as collateral. A home loan is provided by a licensed bank and is governed by the Banking Association of South Africa (BASA), Banking Code of Conduct and Code of Banking Practice (BASA 2019). This code provides valuable safeguards and good banking practice for borrowers and their home loans.
- A car loan (vehicle finance) is money borrowed specifically for the purpose of purchasing a vehicle. Car loans with security simply mean the vehicle can be used as collateral for the loan (Soga *et al.* 2021: 4). They make buying a car

possible, even for the financially constrained individual who pays for the car in instalments.

- Long-term credits are those with payback lengths longer than three years for personal loans (Vaidya 2020: 1). Personal loans are often unsecured, and the borrower is, therefore, not obliged to provide any security in exchange for the loan; however, the interest rate is high, even when the loans are for a longer period.
- Education loans, in the form of student loans, are typically granted for a period of three years or to applicants who wish to pursue higher education or applicants' dependants who want to enrol for higher learning (Gurgand, Lorenceau and Mélonio 2023: 103). The interest beyond rate varies, based on the lending institution and the course for which the credit is requested.

### **2.3 Theory**

The researcher tested the hypothesis that providers offer less credit to low-tax bracket customers than to high-tax bracket customers. This was done by examining the income along with the credit bracket, considering interest rate and payment term.

#### **2.3.1 Tax theory**

Brick and Fung (2020: 1169-1176) compared the cost of credit to the cost of other sources of financing by putting the tax effect into consideration. When retailers and wholesalers are in different tax brackets, their costs of credit are not the same. According to Brick and Fung (2020: 1169-1176), providing credit benefits firms in higher tax brackets more than firms in lower tax brackets. Therefore, customers with low tax brackets who apply for credit will have more payment terms, than customers with higher tax brackets. Providers have a tendency of offering less credit to low tax bracket customers than to high tax bracket customers. This follows an examination of income bracket along with the credit bracket and considering interest rate and payment term.

The criticism to tax theory is acknowledged, with Petersen and Rajan (2019) arguing the primary source of credit cost benefit is information acquisition. Suppliers have a greater ability to obtain information regarding customers than traditional credit providers (Schwartz 1974: 114). The frequency and number of customers gives

suppliers information concerning their clients' creditworthiness (Bellouma 2011: 45). Customer hesitancy regarding incentives for timely payment, as example, informs the provider of poor customer creditworthiness and future financial issues. When the probability of repayment is reduced, providers can threaten customers by withholding future supplies. Furthermore, should customers default, the provider can recoup value by seizing supplied goods. Financial institutions can also recover value from existing assets (Bellouma 2011: 45).

This study adopted and examined tax theory through a survey questionnaire, centred on the effect the borrower's income bracket has on the amount borrowed and the payment term. The study hypothesised high-income borrowers are offered larger amounts of credit, compared to low-income borrowers. This theory is relevant, because the credit practices borrowers are subjected to determines the challenges and risks they face. Furthermore, a borrower's credit score and tax bracket play a vital part in determining the maximum credit they are offered.

## **2.4 History of South Africa's Credit Industry**

Before the NCA came into effect, the Usury Act and associated Exemption Notices dominated the South African credit market. The government's attempt to maintain regulation of the credit business was the NCA. Nonetheless, because of the market's ongoing, rapid developments, there was a continuing need to examine and change the credit laws, as shown below.

### **2.4.1 Usury Act No. 37 of 1962 and No. 73 of 1968**

The Usury Acts of 1926 and 1968 were the laws that applied to the credit business before 1992. As a matter of law, the Usury Acts only applied to money lending transactions. Within the Act, interest rates were scaled based on loan size. For loans of less than ten pounds, a 30 percent annual interest rate was charged, while for loans of more than 50 pounds, a 12 percent annual interest rate was charged. As a result, the credit market became extremely informal and unregulated.

A review panel to examine and enhance the Usury Act of 1962 was established by the South African Minister of Finance in 1967. As a result of the investigation, the Limitation and Disclosure of Finance Charges Act No. 73 of 1968 was passed, repealing the 1962 Usury Act and becoming the Usury Act No. 73 of 1968 (Campbell 2006: 51).



#### **2.4.2 Usury Act No. 73 of 1968 and Credit Agreements Act No. 75 of 1980**

According to the Usury Act, its purpose was to limit and disclose finance charges levied in respect of money lending, credit transactions, leasing transactions, and to address incidental matters relating to them and to repeal the Usury Act of 1962 (Campbell 2006). This legislation was created with the intention of regulating credit costs and ensuring credit agreements contained the appropriate information. The Act mostly applied to credit and leasing transactions, as well as loan transactions with a value of R10 000 to R500 000.

The Act, however, received criticism for being excessively convoluted and challenging to comprehend (Singh 2007: 1). Credit agreements were, likewise, regulated to some extent by the Credit Agreements Act. Specifically, the Act regulated credit agreements concerning movable goods, such as furniture and appliances. First Exemption Notice to the Usury Act issued by the government in 1992, had severely restricted the financial market and prevented most of the population from obtaining credit.

#### **2.4.3 Exemption Notices to the Usury Act**

During the time of the 1992 Exemption Notice to the Usury Act, small loans were exempt from interest restrictions, allowing the development of a formal micro-lending industry and improving credit access for consumers (Kirsten 2006: 5). To safeguard customers from unfair credit practices in the unregulated micro-lending sector, a second Exemption Notice under the Usury Act was published in 1999. This new Exemption Notice to the Usury Act established the Micro-Finance Regulatory Council (MFRC) to supervise and control micro-finance lending and repayments. This regulator, the MFRC, also required registration of all micro-lenders (Singh 2007: 1).

The National Loans Register (NLR) is a database the MFRC used to mandate all micro-lenders to register credit made with them. A consumer's degree of indebtedness was measured by using the NLR, which monitored micro-lenders registered with the MFRC. The Usury Act was further amended in 2003, thus introducing a less fragmented, more organised, and uniform credit regulation that established a more stable financial environment (Meagher 2005: 5).

The South African Government's DTI oversees the regulation of the credit market and advancing the economy overall, but notably, the financial sector. Consequently, the DTI started a process to examine credit legislation, with an emphasis on consumer credit law. To perform a detailed analysis of the consumer credit industry, a technical team was established (Campbell 2006: 53). Their report suggested a policy and regulatory re-organisation, since the credit market had evolved significantly, and the existing regulatory framework had grown out-of-date. As a result, the DTI produced a draft of a proposed consumer credit law (Campbell 2006: 54). An extensive study of credit law served as foundation for the NCA that became operative on 1 June 2007.

Below, is the credit standing of consumers when the NCA was implemented in 2007.

**Table 2.1: Credit Standing of Consumers in September 2007**

<b>Credit Active Consumers</b>	<b>Jun' 07</b>	<b>Sep' 07</b>	<b>% Jun 07</b>	<b>% Sep 07</b>
Good Standing	10.67 m	10.52 m	63.6%	62.3%
Current	7.96 m	7.87 m	47.5%	46.6%
1-2 months in arrears	2.71 m	2.65 m	16.1%	15.7%
Impaired Record	6.11 m	6.38 m	36.4%	37.7%
≥3 months in arrears	2.15 m	2.13 m	12.8%	12.6%
Adverse listings*	1.98 m	2.22 m	11.8%	13.1%
Judgments & administration orders	1.98 m	2.03 m	11.8%	12.0%
<b>Total</b>	<b>16.77 m</b>	<b>16.90 m</b>	<b>100%</b>	<b>100%</b>

**Source: NCR Credit Bureau Monitor (September 2007 Quarter 3)**

Table 2.1 shows the credit bureaus had information of 16.9 million credit-active clients as at September 2007, the year the NCA was implemented. The credit records of 10.5 million people were in good standing. This indicated those customers paid their accounts on time or did not miss more than two instalments on any of their accounts. In September 2007, the percentage of consumers in good standing fell from 63.6 percent (10.67 million) in June 2007, to 62.3 percent (10.52 million). Furthermore, in their Credit Bureau Monitor (September 2007 Quarter 3), the NCR (2007) reported an increase in the number of consumers with impaired credit records from 36.4 percent (6.11 million) to 37.7 percent (6.38 million) in the last two quarters of 2007 (percentages refer to credit active consumers).

To be considered current, a customer must be up to date on all payments and have not missed any by the due date. At the end of September 2007, 46.6 percent of the 16.9 million credit-active consumers fell into this category. One or two instalments had been missed by 15.7 percent; of those questioned, 12.6 percent had missed three or more instalments. An adverse listing (containing consumer behaviour categories such as slow paying, absconded, default, and turned over, as well as write-off) was present in 13.1 percent of the instances, and 12 percent had impaired records. As defined by the NCR (2007), this is an account with three or more missed payments, an adverse listing, judgment, or administration order.

## **2.5 Factors Leading to the Promulgation of the NCA**

The NCA was enacted at a time when consumer protection regulations were unknown in SA. Consumer credit industry regulation was controlled by the Credit Agreements Act and the Usury Act, prior to this act. This left many consumers without debt relief options, other than sequestration and administration.

### **2.5.1 Problems and challenges in consumer credit regulation**

The Credit Agreements Act, Usury Act, and Exemption Notices were the pieces of legislation that governed consumer credit in SA. Market problems were brought on by the existence of three separate pieces of law, which meant there was no consistency, and this allowed people to bypass the law or misinterpret it. Although the consumer had the same duties, regardless of the type of finance received, disclosure requirements and the level of consumer protection offered by the varied legislation differed (Kelly-Louw 2015: 1). For example, micro-loans, personal loans from banks, or hire-buy contracts for the purchase of furniture, all similarly obligated consumers. The extent of protection and potential remedies for these three contracts differed greatly, since they were governed by different pieces of legislation. With various credit providers managing these contracts differently, this put customers at risk.

The Usury Act and the Credit Agreements Act were both out-of-date and no longer applicable in a current and evolving credit economy, exacerbating these problems (Campbell 2006: 54). There was no exception to this rule where the Magistrates' Court Act No. 32 of 1944 provisions were concerned, in relation to debt collection, garnishee orders, and other relevant issues. Due to this, credit transaction

enforcement was inconsistently conducted, inefficiencies in debt collection occurred, and the courts interpreted the law unevenly, impacting consumer protection (Campbell 2006: 55).

The maximum interest rate credit providers charged was regulated by both the Usury Act and the Credit Agreements Act. Typically, financial institutions found a way to avoid this problem, adding costs such as credit life insurance, loan application fees, administrative fees, and club fees, to the loans they provided. According to an analysis of the various fees charged by lenders, even for loans and credit protected by the Usury Act or the Credit Agreements Act, the actual cost of credit would increase by up to two or three times the cap set by the Usury Act (Campbell 2006: 54). Consequently, the Usury Act and the Credit Agreements Act were found to be inefficient and defective in their current forms.

Low-income markets, according to Adewale (2014: 330), suffered the most as a result of inadequate enforcement mechanisms, which led to often reported inefficiencies and misconduct that stigmatised specific credit market sectors. Subsequently, reputable credit providers, particularly banks, were deterred from servicing this market group and offering low-income individuals more accessible credit. The fact an industry as large as micro-lending, which deals with some of the most vulnerable consumers, was dealt with under an Exemption Notice to the Usury Act, demonstrates the inadequacy of the then current legislative framework (Adewale 2014: 331).

Shortcomings found under the Exemptions included marketing and credit advertisements that were deceptive and poorly controlled, and overly invasive door-to-door sales tactics (Chipeta 2012: 1). Furthermore, credit and loan costs were also not appropriately disclosed. To improve disclosure in all these areas, increased regulation was required. Moreover, credit bureaus played a key role in credit provision and as there were reports of inconsistencies, this suggested the need for credit bureaus and credit information exchanges to have stronger supervision (Chipeta 2012: 1).

### **2.5.2 The need for review of credit regulation**

The South African credit market offers a broad variety of credit products to borrowers. These include, but are not limited to, leases, personal loans, instalment

sales, and overdrafts, as well as micro-loans, retail credit and credit cards. Consumer credit is provided by a variety of institutions with banks, micro-lenders, retailers, and other non-bank financial intermediaries among these. It has long been acknowledged the laws governing consumer credit must be reviewed. Current laws are widely agreed to be inadequate and obsolete, reflecting the political realities of the apartheid era. One adjustment made by the DTI in the updated Exemption notice, was to increase the protection on micro-loans, one of the changes designed to address specific difficulties. Despite this, the method has been fragmented, needing a comprehensive and complete examination.

The shortcomings in consumer credit legislation were highlighted in several articles. The Law Commission's 1994 assessment of the Usury Act; the Strauss Report on Rural Finance 1996; the Ntsika Enterprises Promotion Agency's National Small Business Regulatory Review in 1999; and the Policy Board Report on SME Finance, under the presidency of Dr Hans Falkena in 2001, are among these. The primary components of South African consumer credit law included: the Usury Act, the Credit Agreements Act, and the Exemption Notices. Since 1968, factors that have impacted the consumer credit sector comprise substantial political, social, and economic developments, as well as significant technology advancements, among others.

The following reasons are cited for a dysfunctional credit market: fragmented and out-of-date legislation; ineffective consumer protection, particularly for low-income consumers; high credit costs, and credit being difficult to obtain in certain areas; as well as consumer exploitation by micro-lenders, intermediaries, debt collectors, and debt administrators due to over-indebtedness; along with reckless behaviour and practices by credit providers (Shelembe 2006: 2).

## **2.6 Unfair Credit Practices**

The provisions prohibiting misleading and unfair behaviour are worded broadly enough for a court or the NCT to determine whether a given practice is unfair or misleading on a case-by-case basis, considering the circumstances of a specific consumer. The NCA is linked with the concept of consumer protection throughout, stating credit providers must conduct themselves professionally, responsibly, and also to know their clients (Phillip-Stoop 2009: 145). Furthermore, the courts and the

NCT are equipped to offer consumers protection proportionate to their susceptibility. Notable features, in terms of consumer policy, are individualised recognition of consumers in the South African credit market. Additionally, the policy has placed the responsibility of enabling access to credit for consumers and the sanctions it has put in place to deal with reckless and unfair practices (Phillip-Stoop 2009: 145).

The NCA also contains a list of prohibited provisions that may not appear in credit agreements, including provisions that contradict the NCA aim, deceive, or subject consumers to fraudulent conduct, or purport to deprive consumers of rights granted by this Act (SA, DTI 2006). In addition, the NCA prohibits provisions that allow for unilateral changes to credit agreements. the repayment time, or the minimum amount due. Increased credit facilities may also not be granted to a consumer unilaterally by a credit provider. These rules are intended to prevent both reckless and predatory lending, protecting consumers from being unprepared for loan interest “re-set” provisions. For example, the practice of luring consumers into loan contracts with low, fixed interest rates that eventually “reset” to higher, floating rates, often at unsustainable levels. Ngubane (2014: 79) stated the NCA adopted regulations for credit providers, which required them to register before providing credit.

The necessity to deal with consumer debt more effectively was one of the policy reasons that led to the Act, accomplished by addressing unsolicited credit, among other aspects (Renke *et al.* 2019). The legislator intends to achieve this goal by requiring, prohibiting, or restricting certain credit marketing practices. Among these practices is negative option marketing, which occurs when a credit arrangement is offered with the understanding that unless the customer refuses the offer, the agreement will automatically be established; as well as requirements for opting out (Renke *et al.* 2019).

Fisher-French (2015: 1) describes how the NCR complained of monetary administration mis-selling credit life policies, illuminating the dishonest practices that have plagued the credit insurance industry for years. Similarly, the Lewis Group and Monarch Insurance Company were referred to the tribunal for selling retrenchment and disability insurance to pensioners and self-employed customers, for which they were not eligible to claim. Furthermore, Fisher-French (2015: 1) states most

consumers are more concerned with obtaining the item they want and whether their loan will be approved, than how much it will cost.

## **2.7 Challenges and Risks in connection with Unpaid Debts**

According to Fiano (2018: 6), borrowers often encounter challenges when trying to access credit from different providers. Common borrower challenges are, among others, lack of enough credit history, where borrowers are unaware having no or a limited credit history, might cause various challenges. These include having negative information on a credit report, being denied credit based on affordability, insufficient credit, and file fraud or identity theft, where fraud is committed using a borrower's name, identity number, date of birth, or other identifying information without permission. (Fiano 2018: 7).

The law governs credit reporting and assures borrowers only businesses with a specified, legitimate purpose, and not members of the public, are permitted to check customer credit without prior consent (Stolba 2019). Some credit providers report complaints from clients receiving mobile phone messages or emails stating they qualify for credit, when they did not actually apply for it, which is concerning for borrowers who closely monitor their credit affairs (Experian 2020) and a risk for those not paying attention. This becomes a challenge, as borrowers do not distinguish between legitimate and fake providers as the fake providers are creatively made to resemble reputable legitimate providers.

### **2.7.1 Lack of adequate credit history and insufficient credit file**

Black and Adams (2020: 1) explain having no credit means a consumer has never applied for loan, credit card, or other form of financing and as a result, has no credit history with major credit bureaus; for example, TransUnion, Experian, Equifax. Such consumers are referred to as credit invisible, with approximately 2.5 million in SA that fall into this category.

### **2.7.2 Denied credit application**

In terms of the NCA, credit providers are expected to conduct rigorous checks on consumers seeking credit. This is to promote responsible credit granting and administration, while prohibiting irresponsible credit granting (Black and Adams 2020: 3). In the case of home finance, lenders are obligated to thoroughly check borrowers' credit history to decide whether it would be reasonable to provide the

amount requested. In some cases, the provider may authorise a credit for a lower sum, subject to specific restrictions such as a larger deposit needed (Meyer 2021). Furthermore, Meyer (2021) emphasises the most common reason for credit denial is the borrower's limited credit history. Providers look for a proven track record of borrowing and repaying credit (Experian 2020: 1). Late payments or defaults might be examples of negative or unfavourable information against a borrower's name at any of the credit bureaus.

Credit is sometimes denied, as Experian (2020: 1) asserts, because the provider believes existing customer credit balances may be too high or credit card limitations excessive, with the credit report possibly containing an excessive number of inquiries. In some instances, borrowers may have omitted vital information in their application, such as date of birth or residential address, which leads to difficult in verifying customer information. An unstable job history and multiple changes of employment and joblessness also lead to credit denial.

### **2.7.3 Fraud and identity theft**

Identity theft is defined by the United States America (USA) Identity Theft and Assumption Deterrence Act (1998: 2) as, "wilfully transmitting or using, without lawful permission, another person's means of identification with the purpose to conduct any criminal behaviour that violates Federal law under any state." The Southern African Fraud Prevention Service (2020: 1) stated fraud is the "intentional concealment, omission, or distortion of facts, with the objective of acquiring an unlawful or unfair advantage, persuading, or causing another party to suffer a loss (economic, status, or rights), or inflicting injury."

### **2.7.4 Low credit score**

Arye *et al.* (2011) describe a credit score as a numerical representation of a person's creditworthiness, or the possibility of that individual repaying his or her debts. Credit scores are calculated using statistical analysis of a customer's credit report, after which credit agencies keep track of a person's borrowing and repayment actions. A credit score is also a critical component of a borrower's ability to obtain credit (Chatterjee *et al.* 2020: 1).

Van Deventer (2021: 1) argues credit card firms, auto dealers, and mortgage bankers are three types of lenders that examine the credit score before determining



how much and at what interest rate they are able to offer credit. Prior to providing an insurance policy, or renting out an apartment, insurance firms and landlords may check a potential borrower's credit score to evaluate how financially responsible the applicant is.

Below are the credit score ranges as explained by the National Debt Advisors (NDA) (2020).



**Figure 2.2: Credit Score Ranges**

**Source: NDA (2020)**

Figure 2.2 clearly indicates the classifications of credit consumers based on their credit history, status, and affordability (NDA 2020: 1), briefly explained below:

- Poor (0 to 486) - for consumers without a credit history or who have not yet created any credit accounts.
- Unfavourable (487 to 526) - a low credit score is the outcome of a damaged credit history, caused by frequent defaults on various credit products and lenders. Bankruptcy may also have a negative impact on a consumer's credit score and can remain on their credit report for seven years.

- Below average (527 to 582) - being classified as "below average" can result from few negative repercussions on credit history. The interest rate alternatives available may be limited, but they are still there.
- Average (583 to 613) - A consumer's average credit score does not necessarily qualify them for product rewards and best rates, nor does it disqualify them.
- Favourable (614 to 680) - A favourable credit score qualifies for competitive interest rates. However, it may be more difficult to qualify for some types of credit at favourable rates.
- Good (681 to 766) - This is a decent credit score to have, since it indicates to lenders a consumer is financially prudent with credit. To obtain this credit score, one must make on-time payments and never default on loans.
- Excellent (767 to 999) - Being consistent with repayments and credit management leads to an outstanding credit score. A consumer may be eligible for cheaper interest rates on credit cards, loans, or mortgages, since they are regarded at low risk of defaulting and making late payments.

### **2.7.5 Credit consumer risk profile**

In the finance industry, consumer credit risk is defined as the financial loss associated with not repaying or defaulting on a consumer credit product. To monitor, measure, anticipate, and reduce losses brought on by non-payment or default, companies that provide financial services to customers have put in place a procedure (McNab and Wynn 2004). Esterhuysen and Van Vuuren (2011: 18) claims credit risk increases together with the amount of debt financing and credit providers utilise a credit rating procedure to keep credit risk low. As explained by Crook *et al.* (2007: 1 463), when considering a credit decision, the credit scoring process entails developing a forecast on a consumer's potential to repay, based on their credit histories.

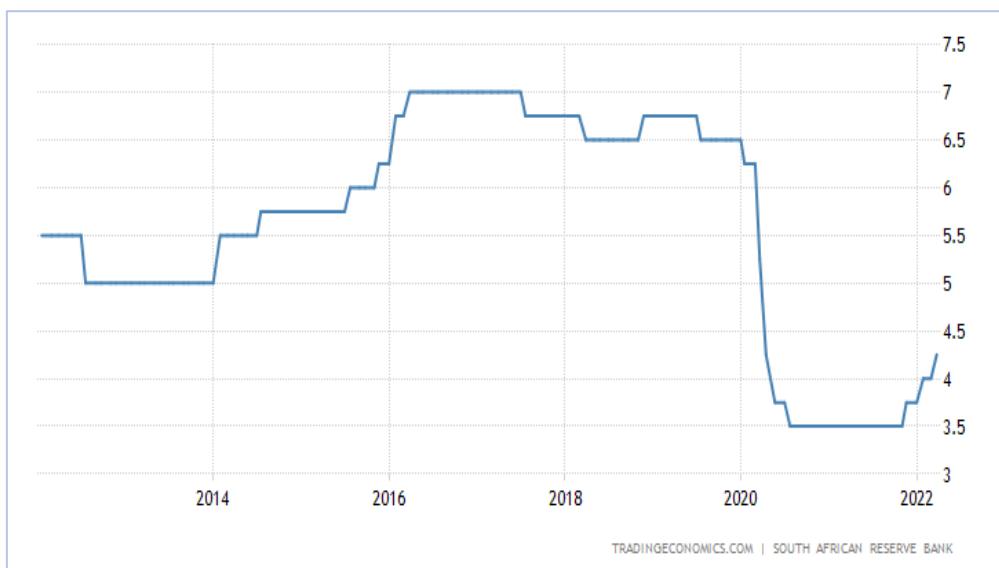
Credit scoring, according to McNab and Wynn (2004: 12), could be considered a fundamental instrument for evaluating credit risk, since it generates a scorecard, with data sources that inform the creditor of potential future non-payment. Furthermore, actions made within the credit cycle have ramifications in the form of bad debts. As a result, it is critical to be well-versed in credit risk management. Before granting any type of credit, credit providers must do sufficient credit risk assessments. The creditworthiness of a borrower is determined prior to credit

approval (McNab and Wynn 2004: 12), in order to reduce consumer over-indebtedness, reckless lending, and repayment defaults.

### 2.7.6 Interest rates

The borrowing costs when banks lend money to consumers, particularly to those with good credit, are stated as percentages and referred to as interest rates (Pelser 2020: 1). Based on money supply and demand, the SARB establishes the interest rate, sometimes referred to as the prime rate; rates might vary and be characterised as above or below-prime (South African Reserve Bank 2021). According to their credit risk profile, borrowers approved for credit are given an interest rate applied to the amount borrowed over time, to compute the overall cost of borrowing. Migiri (2002: 100) maintains proceeds generated by credit lending institutions come from the interest earned on credit given to consumers.

The graph below (Figure 2.3) shows how the interest rates have fluctuated in SA over the years.



**Figure 2.3: Changes in SA's Interest Rates**

**Source: SARB (2022)**

Figure 2.3 depicts the pattern of interest rate fluctuations over time, reflecting interest rates were high in the 2018-2019 fiscal year. Throughout these years, SA remained in the grip of a severe recession and the recovery has been slow (OECD 2013: 4), despite a drop in interest rates beginning in 2020, because of the COVID-19 global pandemic, which affected South Africans' affordability and purchasing

power. During this time, the interest rate fell from 6.75 percent in 2019 to 3.5 percent in 2020, offering relief to customers, with the rate remaining stagnant until the year 2021. As COVID-19 restrictions were eased with more economic sectors opening, the interest rate started increased in December 2021 to 3.75 percent, then to four percent in February 2022, and was at 4.25 percent as of April 2022.

### **2.7.7 Household debt**

A household's debt is defined by Bibby (2010: 7), as debt incurred by borrowing money or receiving goods or services on credit, with the intention of repaying it later. Yates and Gabriel (2006: 1) claim credit, such as home loan, counts for a sizable amount of family expenses. Low-income households consistently make their mortgage payments on time, distributing a sizeable percentage of their income to housing. According to Zhao (2003: 2), debt obligations put households under additional strain for a long time, because regular payments are required to pay off the outstanding debt. Consumer spending and affordability would be limited, leading to an increase in payment defaults, due to high debt levels (Pagquette 1986: 12).

The ratio of monthly debt payments to gross income is known as the debt-to-income ratio. In SA, household debt-to-income ratios have increased as a result of increased financial regulation, interest rates, and growing wealth-to-income ratios (Bibby 2010: 9). Furthermore, rising incomes result in positive economic growth, fuelled by the rising prices of household needs and low interest rates, should a consumer buy on credit. This led to a significant rise in debt levels.

### **2.7.8 Risks in connection with unpaid debts**

The Truth About Money (2020) report showed borrowers' credit facilities may be suspended in the event they do not make repayments. Credit facilities provide credit up to a certain limit, available to the borrower at any time (Sindhu 2012). Where credit facilities are concerned, everything a borrower repays is available for reuse, and interest is only calculated on the amount the borrower has used. For items acquired under hire purchase agreements or instalment sales, creditors can submit a request for the goods to be returned in case of non-payment. They can then sell it at a fair market value to offset the borrower's debt (Pelser 2020).

During the COVID-19 pandemic, credit providers allowed qualifying customers to take payment breaks, considering the period the country was on alert level 5, where

non-essential employees were not allowed to go to their respective places of employment. Ciaran (2020: 1) found, due to a lack of information, borrowers were unaware of this benefit, considering the number of borrowers who submitted repayment break applications. In addition, Ciaran (2020: 2) argues borrowers could end up paying three times more on top of what they previously owed, should credit issuers provide repayment holidays and stop payments on vehicle, house, and personal loans. Sager (2020: 1) commented, in a nation as over-indebted as SA, this is enough to drive those already struggling to make ends meet, into a situation where their debt-to-income ratio is unsustainable.

According to Irby (2021: 1), along with creating credit, debtors are at risk of being issued credit, even when they do not meet the qualifying criteria, and this negatively affects the borrower's credit rating. Furthermore, borrowers would be at risk of identity fraud, not understanding credit, and temptation for further credit, which will lead to debtors not meeting their month-to-month budget goals (Irby 2021: 1).

## **2.8 The National Credit Act (NCA)**

All credit transactions must follow the NCA, which was intended to foster a more secure credit market. A unique NCA feature is that it is a binding contract that controls and regulates all credit transactions under one Act (Van Heerden 2008: 28). The NCA was enacted to protect consumers and to deal with consumer credit issues. Consumers benefited from the Act, because it provided them with the information required to help manage their credit and understand the ramifications of repayment defaults, before entering a credit agreement. The Act ensures all related transactions are clear, fair, and easy to understand, as well as providing additional information for consumers when needed (Pillay 2009: 2).

As part of the NCA, consumers are also protected from credit provider exploitation and are prevented from entering into unsuitable credit agreements. Rossouw (2008: 2) is of the view the NCA aims to protect consumers from being exploited by credit providers, as a result of their over-indebtedness or reckless lending, since it clarifies consumer account payment defaults, as well as the rationale for defaulting collection. NCA adoption has had considerable impact on the South African credit industry (Rossouw 2008: 2). Most significantly, the Act has changed the way credit

providers operate. When issuing credit, credit providers must follow the regulations and utilise an appropriate method of establishing a consumer's affordability.

In May 2014, a measure known as the National Credit Amendment Bill (National Credit Amendment Act No. 19 of 2014), an amendment to the NCA of 2005, was introduced. The Bill also restructures and repeals other provisions of the NCA and references relevant to those sections will be made accordingly (NCAB 2014). As Pieterse (2009: 2) indicates, the NCA advances the government's objective of providing South Africans with affordable credit and creating a fair, transparent, controlled, non-discriminatory, accessible, and accountable credit market.

### **2.8.1 Credit agreement in terms of the Act**

Credit agreements are those that qualify as credit facilities, credit transactions, credit guarantees, or any combination thereof.

#### **2.8.1.1 Credit facility**

A credit provider creates a credit facility when they sign a contract to deliver goods or services to a customer or to make a one-time payment of an amount specified by the customer or to postpone the customer's payment of a portion of the goods or services cost. There may be any fee, charge, or interest due to the credit provider for the postponed payment (Renke *et al.* 2019: 2).

The concept of a credit facility includes a contract for the purchase and sale of moveable commodities on credit, for example, the purchase of goods using in-store cards, in which case credit is extended to the consumer (Renke *et al.* 2019: 2). In addition, as with any other arrangement, there must be a charge, fee, or interest paid by the customer for this transaction, in order to count as a credit facility.

The definition of an instalment arrangement, however, differs. The transfer of ownership to the buyer is the distinction between these two purchase and sale contracts. According to the definition, an instalment agreement must include a clause on property ownership. As this is not the case in terms of the credit facility definition, it is believed the parties' agreement does not address the issue of property transfer (Grove and Otto 2002: 1). As a result, the common law standards would apply in terms of ownership passing to the buyer immediately upon transfer of the property to the buyer (Nagel and Kuschke 2006: 2).

Agreements under which services are provided to consumers are also covered by the NCA. In terms of the prior rules, the situation was as follows: unlike the Credit Agreements Act, which governed most of the contractual characteristics of agreements, this Act did not apply to credit agreements for services (Grove and Otto 2002: 16-18). The supply of services was not included in the rules establishing the implementation of that Act. However, the Usury Act, which governed the financial components of the same contracts and money-lending activities, also extended to the providing of services on credit (Grove and Otto 2002: 16-18). The Act consolidated the rules eliminated by prior regulations, to protect consumers on both the contractual and financial sides of agreements in which services were provided.

#### **2.8.1.2 Credit transaction**

According to the South African DTI (2007: 1), credit arrangements, regardless of their form, constitute credit transactions such as pawns, discounts, leases, and incidental credit agreements, as well as instalment agreements, mortgage agreements, secured loans, or any other agreement that delays payment of an amount owed by one party to another, but is not a credit facility or credit guarantee.

#### **2.8.1.3 Credit guarantee**

When someone commits to fulfilling a commitment made by a different customer, under the conditions of a credit facility or credit transaction to which the Act applies, or when they pledge to do so upon request, this is known as providing a credit guarantee (South Africa, Department of Trade and Industry 2006). The Act's definitions of the agreements to which it relates, make it apparent any agreement must have two characteristics in order to satisfy the requirements of the Act to count as a credit arrangement. The primary reason for the delay, is the consumer's need to pay the entire amount of the goods or services cost, a portion of the cost, or to return credit to the credit provider is delayed, or some type of prepayment is made (South Africa, Department of Trade and Industry 2006). Furthermore, the postponed payment is subject to a fee, penalty, or interest, while prepayments are eligible for a discount.

#### **2.8.1.4 Consumer in terms of the Act**

In the context of a credit agreement, the consumer is defined as the party who buys or is sold goods or services under a discount transaction, incidental credit

agreement or instalment agreement and credit is granted to the party under a credit facility (South Africa, Department of Trade and Industry 2019)

#### **2.8.1.5 Credit Provider in terms of the Act**

The term credit provider, in terms of the Act, refers to a party that advances money or credit under a pawn transaction, a party that offers goods or services under a discount transaction, an incidental credit arrangement, or an instalment agreement (South Africa, Department of Trade and Industry 2019).

#### **2.8.2 Purpose of the National Credit Act (NCA)**

The Act is responsible for regulating the credit industry, and the preamble reveals its purpose is to create a fair and non-discriminatory consumer credit market, regulate credit, improve consumer information, and empower black individuals, as well as prohibit unfair practices, promote responsible credit granting, and establish national norms and standards. It also aims to repeal existing laws and establish a consistent enforcement framework, including the NCR and the NCT (South Africa, National Credit Act No. 34 of 2005)

#### **2.8.3 The objectives of the National Credit Act (NCA)**

Since inception, the viability of implementing a single piece of legislation to control the credit environment was questioned, as the Act had different broad aims.

The following is a comprehensive explanation of each NCA objective, as gazetted in the NCA (South Africa, Department of Trade and Industry 2019)

##### **2.8.3.1 One set of rules for all credit activities**

Interest rates, fees, and other costs were not regulated and varied greatly amongst lending institutions, enabling providers to grant credit at high rates of interest. Only specific goods would be debited from the borrower's account under the NCA, which was developed to produce a single set of regulations for all suppliers (Rossouw 2008: 2). However, Rossouw (2008: 2) finds little statistical evidence to support the NCA claim that lenders have been subjected to uniform rates and costs, since interest rates and costs vary widely from provider to provider.

##### **2.8.3.2 To prohibit unfair credit and credit-marketing practices**

The cost of credit was extremely high prior to the NCA's implementation, with average interest rates on microloans regulated by the Exemption Notice surpassing



90 percent annually and interest rates on one-month loans reaching up to 30 percent monthly (Davel 2007). Customers typically did not grasp the overall cost of credit, because the credit disclosure provided by the credit provider was false. Unfair credit and credit-marketing practices are prohibited under the NCA. According to the Act, a credit quotation must contain the amount, number, total cost of all instalments, including interest and necessary insurance, as well as the interest rate and any residuals, in a typeface no smaller than the quotation's average font size (Davel 2007). This is done to guarantee the credit consumer is informed regarding the cost of the credit once it has been fully repaid, including any optional goods.

### **2.8.3.3 To promote responsible credit granting and prohibit reckless credit granting**

The antiquated credit system had a clear shortcoming before the NCA; it was ineffective at preventing consumer over-indebtedness and addressing reckless lending practices (Goodwin-Groen and Kelly-Louw 2006). In particular, the new, more thorough NCA framework for credit regulation was designed to curb predatory lending practices that led to consumer over-indebtedness. The NCA's distinct characteristic is the wide variety of strict lending measures it has adopted in credit issuing, all assisting to minimise the amount of over-indebtedness incurred by borrowers (Renke *et al.* 2019).

To assess whether the customer can afford the credit, the NCA mandates a pre-agreement examination prior to entering a credit arrangement. This is the NCA's most pro-active, responsible lending policy. Van Heerden and Renke *et al.* (2019: 5) emphasise the pre-agreement evaluation requirement for credit providers acts as a filter to avoid reckless credit granting, one of the main causes of consumer over-indebtedness. Under three circumstances described in section 80 of the Act, the pre-agreement assessment duty is utilised to indicate credit extensions as "reckless."

As described in Section 80 (1) (a) of the NCA, irresponsible credit giving occurs when a credit provider extends credit without performing a pre-agreement evaluation beforehand (NCA, Section 80 (1) (a)). Any credit granted in this way is risky by nature, since the credit provider should have conducted a pre-agreement evaluation prior to granting credit to the customer. The second type of irresponsible

credit giving occurs when a credit provider overlooks the preponderance of available information suggesting the consumer is typically uninformed of the risks, expenses, and duties involved with a credit arrangement (Section 80 (1) (b) (I)). The third type of irresponsible credit happens when a credit provider offers credit to a customer who is obviously unable to pay it back, even though a pre-agreement evaluation indicates doing so will lead to the customer becoming over-indebted.

In the case of the third type of irresponsible lending, the significance of a good pre-agreement affordability evaluation is particularly obvious. According to Van Heerden and Steenot (2018: 1), the reckless credit extension required by section 80 must have taken place at the time the credit was extended. As a result, assessing whether credit was issued recklessly as required by the NCA, necessitates a "set point" assessment, since the credit agreement was signed. Absa was declared irresponsible in the matter of *Absa v Pensioner* in the Port Elizabeth Magistrates Court in March 2010 (News24 2010: 1) after it offered a loan to an 81-year-old senior with a monthly income of R3 700 with household expenditure at R2472 and repayments of R4 200. After being rejected by a number of other lenders, the borrower obtained the credit. The *ABSA v Pensioner* case was ruled reckless lending by the Port Elizabeth Magistrates Court and judgement resulted in the revocation of the entire contract, with the retiree not required to repay any money (News24: 1).

Another instance involved a customer who had a balance on their credit card that exceeded their set limit. The Banking Ombud (2021: 1) decided in the consumer's favour. Investigation into the reason the customer went over their limit, revealed a delay between the money taken out of the account and the amounts the vendor credited. The actual balance would only have been reflected after the vendor's credit and debit transactions had been reconciled. In response to the complainant's credit limit being exceeded significantly, the bank admitted a system error allowed the complainant to go over the limit. The customer continued to gamble, without comparing the sums she was spending, to the amounts she was winning (NCR 2012).

#### **2.8.3.4 To promote a fair, accessible, and sustainable marketplace, and establish national norms and standards relating to consumer protection**

The several inconsistencies in the Usury Act, Exemption Notices to the Usury Act, and Credit Agreements Act, do not impact the NCA, as the Act applies equally to all consumer credit transactions, regardless of form or provider (South Africa, Department of Trade and Industry 2019). This would ensure interest rate regulation is applied consistently, reducing arbitrage and circumvention. The new credit laws are uniformly applied to all credit providers and credit transactions (Davel 2007: 1). However, any credit market regulation must recognise the distinctions between using a credit card or overdraft facility to pawn anything, a mortgage, or both. These distinctions are primarily related to disclosure, account treatment, and contracting. As a result, the NCA allows a different treatment of products and costs associated with smaller transactions (South Africa, Department of Trade and Industry 2019) while establishing a common regulatory framework overall.

Credit insurance became a significant area of expansion for lenders and insurance companies because of the old legislation's broad scope. In addition to regulating the insurance market, the NCA intends to regulate the relationship between credit and insurance products, particularly where over-selling and over-insuring are a concern, and consumers do not have a wide choice of insurance products.

Due to unjustifiable competitive advantages provided to lending institutions, repayment arrangements reduced competition in the consumer credit sector. Micro-lenders and banks used to receive direct repayment through administrative means and preferred debit orders from client payrolls or bank accounts where they received their salaries. As a result, credit provider costs and risks were reduced, but it also encouraged unfair credit practices, such as retaining or blocking bank cards and pin numbers or obtaining garnishee orders, in order to compel their clients to make payments (Shelembe 2006).

#### **2.8.3.5 To provide for debt re-arrangement in cases of over indebtedness**

According to DeNicola (2019), debt re-arrangement is a technique that entails reducing borrowers' monthly repayments or paying off their creditors entirely. It can be formed with the ultimate objective for the borrower becoming debt-free and regaining control of their finances. Debt consolidated loans, debt review, voluntary

mediation or voluntary sequestration, are among the debt rehabilitation services available to help consumers achieve financial freedom. Voluntary sequestration is a legal process in which a consumer files an application with the High Court to be declared bankrupt. Debt rehabilitation is possible after sequestration, however, a period of at least four years must pass before a consumer can apply to have their estate rehabilitated after sequestration (Credit Rehab 2020).

Prinsloo (2002) argued SA's debt-to-income ratio is too high and has remained elevated since implementation of the NCA. It is mandatory for credit providers to assess each consumer's capacity to meet obligations, by taking reasonable steps to evaluate consumer understanding of the obligations, risks, and costs involved in the proposed agreement.

#### **2.8.3.6 To provide for registration of credit bureaus, credit providers and debt counselling services**

According to Section 40 of the Act, all credit bureaus, credit providers and debt counsellors should register with the NCR to practice in the credit industry and ensure compliance with the Act is upheld. Credit bureaus, sometimes referred to as consumer reporting firms or credit reporting organisations, play a significant role in the financial lives of millions of people. Although the credit bureaus do not decide whether funds are granted to people, they do provide credit reports and scores to banks, mortgage lenders, credit card companies, and other sorts of creditors (DeNicola 2019).

#### **2.8.3.7 To regulate the cost of credit**

The rules that establish the interest rate ceiling in SA have an influence on the Total Cost of Credit (TCOC), which is based on the repurchase rate established by the SARB. The standard TCOC is equal to the maximum setup and service costs, plus 2.2 times the interest rate, plus 20 percent. Initiation costs are usually limited to 15 percent of the loan amount, with a R50 service charge each month for the duration of the term (South African Reserve Bank 2021).

The backdrop of the cost of credit in SA may be described using the example supplied by AMPS 2006 figures (Campbell 2006). Suppose a customer received R1 000 in January 2022 and needed to purchase R1 000 value of school clothing. The consumer had a bank checked account and decided to apply for a loan, with

the knowledge the loan would have a 30 percent interest rate (Campbell 2006). The decision to take out the loan had then been put on hold. This may be addressed by the NCA, which went into effect on June 1, 2007, as the Act requires micro-lenders to decrease interest rates on smaller loans to as low as 5 percent per month.

#### **2.8.3.8 To promote a consistent legislative enforcement framework relating to credit**

Consumer perceptions of credit provider services, whether provided by banks, retailers, or micro-lenders, generally reflect a sense of disempowerment and helplessness. The credit industry is perceived as one where the consumer is at the mercy of the credit provider (Mkukwana 2012). To enhance customer access to redress and guarantee compliance by credit providers, the NCA presents extensive suggestions for changes to the regulatory framework in the consumer credit sector.

An increasing number of people is using credit, even those with low income (Anon 2020). It is, therefore, critical to provide effective protection and redress, considering the industry also benefits from effective enforcement and quick resolution of complaints. Furthermore, reputable credit providers need to know their competitors follow the same set of rules. Consumers, as well as the growth of a stable and sustainable credit business, are also affected by low compliance rates, high levels of reckless behaviour, and a lack of responsiveness to customer concerns.

According to DeNicola (2019), a fully equipped statutory regulator must be formed to control the credit business and provide customers adequate remedies in order to ensure enforcement and encourage access to redress. The NCR registers consumer credit providers, conducting inspections, and generally monitoring compliance with the Credit Act (NCR 2018).

Credit regulators investigate complaints of systematic conduct and violations of consumer rights on a proactive basis. Furthermore, the credit regulator resolves complaints against credit providers, by referring matters to appropriate institutions and resolving complaints against credit providers. The underlying gap between customers and credit providers in the credit market makes this role even more crucial, as well as consumers' inability to negotiate, particularly low-income consumers. As a result, the regulator is tasked with resolving issues on behalf of consumers (NCR 2018).

### **2.8.3.9 To establish the NCR and the NCT**

The NCR conducts market research, monitoring credit availability and costs, accepting complaints, and conducting investigations to ensure consumer rights are upheld, while also enforcing the Act and acting against institutions in violation (South Africa, Department of Trade and Industry 2019).

The Tribunal is a separate entity not affiliated with the NCR, comprising at least ten members, including the Chairperson. Cases involving noncompliance with the Act are heard and, as per Section 150, the Tribunal may impose the following sanctions, such as suspending or cancelling the registrant's registration, requiring repayment to the consumer of any excess amount charged, issuing fines, and providing redress to consumers, and so on (South Africa, Department of Trade and Industry 2019).

### **2.8.4 Three types of regulations to protect credit customers**

Three primary forms of regulation are used by certain economies with developed financial sectors to protect credit clients. These restrictions are integrated into the NCA, as explained by Goodwin-Groen and Kelly-Louw (2006). Three pillars represent the three different forms of regulation:

- Pillar 1: Lenders may be required to keep within the limits of client credit redemption capacities.
- Pillar 2: Lenders are obliged to disclose fully all costs of credit arrangements before a client signs a contract.
- Pillar 3: Caps may be placed on consumer credit pricing or usury laws may determine that pricing.

**The first pillar** – The Swiss Federal Act on Consumer Credit implements client ability to pay assessment. Secured credit is not covered by federal consumer credit legislation. However, it is required by law to consider the consumer's borrowing capacity when determining the maximum attachable income share. Should the client have multiple consumer loans, this attachable income must be sufficient to cover all debts within a 36-month period. To avoid reckless credit, the NCA requires both the lender and the consumer to examine the customer's ability to pay (NCA sections 80–84).

**The second pillar** – disclosure of all costs. The USA and the European Union are implementing Pillar 2. The European Parliament and Council create a precise

mechanism for calculating the annual percentage rate of charge (APRC) in Directives 87/102/EC and 98/7/EC (European Council). This method establishes an equivalent relationship between loans, payments and fees. In addition, an APRC statement must be included in any advertisement or offer posted in a place of business, promotes credit or the setting up of a credit agreement, and contains information regarding interest rates or other costs associated with the credit.

The Federal Truth in Lending Act defines the annual percentage rate (APR) in the USA. By using this approach, the equivalence between loans, on the one hand, and payments and fees, on the other, is established. In addition, an APRC statement must be included in any advertisement or offer that is posted in a place of business and that promotes credit or the setting up of a credit agreement and contains information concerning interest rates or other costs associated with the credit. Whenever a payment is made, the accrued interest is capitalised using the USA method. Per the NCA, all applicable interest, fees, and charges on the principal amount must be fully disclosed in percentage and rand terms. As part of the pre-agreement statement and quotation, the client must receive a repayment schedule and have time to consider it before committing to the loan (section 92 of the Act and regulations 28 and 29).

According to the nature of advertisement, the NCA and Regulation have strengthened the need for disclosure restrictions. The following information needs to be made available whenever credit providers, for instance, market particular credit products, grant a customer a certain amount of credit, or offer to provide services on credit:

- instalment amount.
- number of instalments.
- total amount of all instalments (including interest, fees, and insurance).
- residual or final amount payable; and
- interest rate and other credit costs (section 76 of the NCA, read with regulations 21 and 22).

(Goodwin-Groen and Kelly-Louw 2006)

**The third pillar** – interest rate caps or Usury law - is found in Switzerland, France, and parts of the USA. As background, The Second Pillar identifies and assesses

the theoretical basis for understanding different components of the total credit price from a cost accounting standpoint.

In Switzerland, for example, the Bundesrat sets the cap (Federal Council). Although it is necessary to consider the interest rates banks must pay for refinancing, the ceiling should typically be set at or below 15 percent annually.

Article L. 313-3 of the "Code de la Consommation" (Consumer Code) establishes the usury regulation in France.

Section 5-501 of the General Obligations Law in New York set this rate at 16 percent per year (Goodwin-Groen and Kelly-Louw 2006). Germany and the United Kingdom (UK), according to Goodwin-Groen and Kelly-Louw (2006), use different approaches to interest rate caps. There are no definitive caps, but usury interest rates are prohibited by law. In Germany, usury interest rates are often punished by the courts when the APR is double the current standard rate and the loan was established by exploitation of an exigency, inexperience, lack of judgment, or considerable weak will, with interpretation.

The requirements set by the Consumer Credit Act appear to be virtually comparable in the UK, however, this may not be the case. According to 2004 research by the UK Department of Commerce and Industry, the UK has no ceiling in place. It was found the absence of a ceiling in the UK and several US states had led to the diversification and competitiveness of the subprime markets, which had a downward effect on pricing.

Maximum interest rates are specified in the National Credit Rules for seven distinct categories of credit; these are the effective usury restrictions. Under current conditions, the maximum rate of 36.5 percent per annum is charged on unsecured credit transactions as the SA Reserve Bank's ruling Repurchase Rate, times 2.2, plus 20 percent. It may be as high as 4 881 percent per annum, when the maximum initial service fees are also included in the all-inclusive interest rate.



**Table 2.2: Consumer credit law in selected countries**

	<b>Pillar I</b>	<b>Pillar II</b>	<b>Pillar III</b>
<b>France</b>		APRC includes all costs and must be published.	A loan is stated as usury when the rate exceeds the average effective rate of the prior quarter (published by the Bank of France) by one-third.
<b>Germany</b>		APRC includes all costs and must be published.	When the APR is double the market interest rate and there has been abuse of an exigency, inexperience, lack of judgment or substantial weak will, the interest rate is illegal according to court orders.
<b>Switzerland</b>	Attachable income must be high enough to pay back the credit within 36 months.	APRC includes all costs.	Interest cap usually fixed below 15 percent per annum.
<b>United Kingdom (UK)</b>		APRC includes all costs and must be published.	Usurious credit agreements can be reopened by court.
<b>United States of America (USA)</b>		APR includes all costs according to the Federal Truth and Lending Law.	Different regulations in every state.
<b>South Africa (SA)</b>	NCA requires lender to assess the client's ability to pay.	All costs must be disclosed in terms of the NCA and Regulations.	Regulations provide for maximum rates of interest applicable to seven different types of credit.

**Source: Goodwin-Groen and Kelly-Louw (2006)**

### **2.9 The National Credit Regulator (NCR)**

Section 12 (1) of the NCA established the NCR's office, which went into force on 1 June 2006. This organisation was formed to regulate the South African credit sector

efficiently and comprehensively (Adewale 2014). The NCR is an impartial government institution, in charge of directing and overseeing the credit sector. A board of nine people oversees the NCR, and three are in charge of matters pertaining to money, housing, and social development (Vessio 2008: 227-242). The board oversees NCR strategic planning, managing, and efficient resource use, ensuring the NCR adheres to all financial and legal accountability requirements, and providing the Chief executive officer (CEO) with advice on the NCR's performance of its duties and powers (South Africa, Department of Trade and Industry 2019).

According to Vessio (2008: 229), the NCA also requires the NCR to encourage and support the formation of an accessible credit market, with a focus on the requirements of previously disadvantaged people. The NCR must also provide understanding of the credit market and improve credit awareness by means of education and information approaches.

### **2.9.1 Functions of the National Credit Regulator (NCR)**

The NCR has a wide variety of functions disseminated throughout the Act. As a result, the researcher seeks to highlight only a handful of functions. These responsibilities also include amendments to the Act (South Africa, Department of Trade and Industry 2019) that relate to the NCR. The NCA requires the NCR to create an accessible credit market, negotiate agreements with regulatory authorities, promote credit provider registration, and enforce compliance with the Act. It will appoint a CEO to oversee regulator functions, monitor industry matters, conduct research, and propose policies, as well as investigate and evaluate complaints related to alleged Act violations.

Additional NCR responsibilities include protecting low-income consumers, as well as previously disadvantaged individuals (Vessio 2008: 230). Other responsibilities include monitoring and reporting to the minister on credit availability, credit market developments, consumer credit research, and any other matter relating to the credit industry. It is the NCR's obligation to hear disputes and provide rulings, to investigate incidents in violation of the NCA (Vessio 2008: 230).

Through authorising credit providers, credit bureaus, and debt counsellors, the NCR monitors the consumer credit business. Credit companies, credit bureaus, and debt counsellors are not authorised to function, unless they first register with the NCR.

The NCR may also suspend or cancel any registration (Section 14 (b) of the NCA 2005).

The NCR (2020: 2) states one of the most important responsibilities of the NCR is enforcement of the NCA by promoting informal resolution of disputes arising under the NCA between consumers, on the one hand, and credit providers, on the other. The NCR should receive complaints of alleged violations, evaluate and investigate such allegations, negotiate concluding undertakings and consent order, as per the NCA. Furthermore, the regulator should enforce the NCA by monitoring the consumer credit market, creating, issuing, and enforcing compliance notices, to ensure unfair credit practices are avoided, detected, and prosecuted. In addition, the regulator would refer matters to and appear before the NCT, while also dealing with any other matter referred to it by the NCT.

As of March 31, 2020, the NCR had 7 837 lending institutions, with 40 632 branches, 44 credit bureaus, four agents for payment distribution, and six agents for alternative dispute resolution, as well as 1 528 debt counsellors (NCR 2020: 30).

## **2.10 The National Consumer Tribunal (NCT)**

The NCT was established by the NCA. As a result of this Act, there is greater market fairness by balancing the rights and duties of credit providers and customers, and it applies throughout SA (Section 26 (1) (a) of the NCA 2005). The establishment of an authoritative adjudicated body was prompted by the need to resolve matters referred to the NCR under the NCA.

As part of its responsibilities, consumers receive restitution through the Tribunal, which reviews complaints of NCA violations and issues orders (National Credit Tribunal 2020) Every NCR verdict may be appealed by consumers or providers to the High Court or the Tribunal's entire panel (SA, DTI 2010). Applications submitted under the NCA by customers, credit providers, credit bureaus, and debt counsellors, as well as the NCR, must be decided by the NCT, since its mandate as an impartial organisation, is to guarantee justice and fairness are upheld in the consumer and credit markets. An argument is evaluated from all positions before it is planned by the NCT. In the same way the South African High Court renders judgments, the NCT does as well. The penalty for disobeying an NCT order is a fine or up to ten years in jail (NCR 2021).

### **2.10.1 Functions of the NCT**

According to the DTI (2010: 2), the NCT is responsible for evaluating applications under the NCA, addressing allegations of prohibited conduct, determining whether such conduct has occurred, and imposing remedies, as well as granting cost orders, and exercising any other powers conferred by the Act.

The primary responsibility of the Tribunal is to deal with credit providers who engage in NCA-prohibited behaviour. Once the NCR investigates the conduct of the credit providers, it recommends the case to the NCT for an investigation into any potentially unlawful acts. Sanctions the NCT may issue, should it find a credit provider has engaged in unlawful behaviour, includes a credit provider's registration being suspended or revoked, or a demand to pay back any overcharged amounts and overage interest stipulated in the credit agreement to the consumer (Section 284 of the NCA 2005).

As a measure of punishment, the Tribunal may levy an administrative penalty on a credit provider found in breach of the NCA. Section 151 of the NCA states the NCT penalty cannot be more than 10 percent of the credit provider's annual turnover or R1 million. These are the severe penalties that credit providers may face when in violation of the NCA.

Both the NCR and the NCT were created with the goal of improving and regulating credit in SA, even though their primary duties are separate. The main objective is to defend clients from lending institutions guilty of carelessly granting loans. To avoid irresponsible lending, the NCRs require credit providers to complete adequate affordability assessments before granting credit.

### **2.11 The Credit Ombudsman**

The NCR is also in control of increasing public awareness of consumer credit issues and intensifying knowledge regarding how the consumer credit market functions in SA (Credit Ombudsman 2020: 2). By employing methods for public awareness, education, and information, the NCR anticipates accomplishing this. As part of its responsibilities to the credit market, the NCR is also expected to issue explanatory notices describing its procedures, provide a non-binding opinion on NCA interpretations, or request a declaratory order from the court when any NCA provision is misinterpreted or misapplied. The NCR tracks socio-economic patterns

of consumer credit activity, as well as identifying factors that contribute to over-indebtedness, including the patterns, causes, and consequences of over-indebtedness (Section 272-274 of the NCA).

## **2.12 Debt Review, Over-Indebtedness and Reckless Credit**

The debt review procedure is outlined in section 86 of the NCA, and regulations 24 to 26. Debt review starts when a consumer requests an examination from a debt counsellor (Section 44) to determine whether they are over-indebted. The debt review process is lengthy and includes stages such as when a consumer requests a debt review and when a debt counsellor performs its duties. It also includes stages pertaining to what the consumer and credit providers must do during the debt review process, how the debt counsellor determines whether they are over-indebted, and what they can do should this be confirmed. In certain circumstances, the Act also allows for the termination of the debt review as per sec 86 (10).

### **2.12.1 Declaration of over-indebtedness and debt restructuring**

A debt review is used to determine whether a consumer has been provided reckless credit and whether they are over-indebted. During a debt review, a debt counsellor may make one of the following decisions, either on the consumer's initiative or as a result of the notice provided by NCA section 129 (1) (a), or on the basis of a court referral under section 85:

A determination the consumer is not over-indebted: The debt counsellor must decline the consumer's request for a debt review in this situation even when they have concluded a certain arrangement was irresponsible when agreed. Although the consumer may lose all hope of debt relief, the NCA section 86(9) states the consumer may apply directly to the Magistrate's Court for the order contemplated in section 86 (7) (c), should a debt counsellor reject an application for debt review. An order of this type may declare one or more credit agreements to be reckless credit and may restructure one or more (Scholtz *et al.* 2008).

A determination the consumer is not over-indebted yet but is experiencing or likely to experience problems in future: In this situation, the debt counsellor may advise independently examining the client and each of the relevant credit providers to structure and agree on a debt reorganisation plan. When a debt counsellor's advice is accepted by the customer and each credit provider under NCA section 86 (7) (b),

the debt counsellor shall record the proposal in the form of an order. Should the customer and each credit provider concerned agree, the order must be submitted as a consent order, in compliance with section 137 of the NCA. Should the debt counsellor's suggestion be refused, he or she must submit a complaint with the Magistrate's Court, along with the advice.

A determination the consumer is over-indebted: In the event the debt counsellor reasonably concludes the consumer is overindebted, based on the debt review assessment, he or she may recommend the Magistrate's Court declare the consumer's credit agreements reckless, or restructure one or more of their obligations. According to section 86 (7) (c) (ii) of the NCA, the court may rearrange the consumer's obligations by extending the agreement term and reducing the amount of each payment due accordingly. The court may also postpone the dates or extend the term on which payments are due under the agreement for a specified period. Lastly, it has the power to recalculate the consumer's obligations due to violations of Part A or B of Chapter 5 or Part A of Chapter 6 of the NCA (Scholtz *et al.* 2008).

### **2.12.2 Over-indebtedness**

In Part D, Chapter 4 of the NCA, over-indebtedness and reckless credit is dealt with, as well as the debt relief options available. Scholtz *et al.* (2008) interpreted that an individual is considered over-indebted when they are unable to make payment or meet all obligations under credit agreements, considering their financial resources, responsibilities, and prospects. Over-indebtedness thus encompasses not only current inability to meet obligations, but also future or proximate inability, thus, the words "or will be unable to satisfy" in section 79 (Scholtz *et al.* 2008: 11).

### **2.12.3 Reckless credit**

As previously established, NCA requirements regarding irresponsible credit apply solely to natural person consumers. The NCA requires credit providers to conduct a credit assessment prior to entering a credit agreement, to determine whether a consumer understands the risks, costs, rights, and obligations under the arrangement and can manage these. According to Scholtz *et al.* (2008), a credit arrangement is reckless under Section 80 when, at the time the agreement was established, the credit provider did not perform an evaluation; the credit provider

entered into the credit arrangement with the customer despite the credit provider's preponderance of information indicated:

- i. The proposed credit agreement risks, costs, and obligations were not completely understood or appreciated by the customer.
- ii. Entering into that agreement would put the consumer in a position of being over-indebted as per section 81(2).

In any court process where a credit arrangement is involved, section 83 of the NCA allows a judge the power to declare a credit agreement reckless, despite any provision of law or agreement to the contrary. A court's determination of reckless credit has the effect of allowing a consumer to obtain significant debt relief in some cases, such as the agreement being set aside or, at the very least, the agreement being suspended, and other credit agreement debt being restructured. Since a court may bring reckless credit into consideration when evaluating a credit agreement further, a consumer may be granted debt relief upon the court's initiative, should a court decide to do so. This includes the court setting aside the relevant credit agreement or suspending that agreement, as well as restructuring other debts incurred under the relevant credit agreement.

#### **2.12.4 Debt relief for over-indebtedness**

The primary strategy for dealing with excessive debt is relief in the form of debt restructuring. Under section 85 of the Act, courts can declare and relieve over-indebtedness. An application for debt relief may be evaluated by a debt counsellor under section 86. Debt restructuring and debt review are two different steps of the debt relief process. The first stage is a debt review, performed in front of a debt counsellor.

The court, or alternatively, upon the submission of a consent order per section 138 of the NCA, may formally declare over-indebtedness and, thereafter, order a restructuring. Hence, when customers who are over-indebted become aware of their situation, they can take the initiative and apply to a debt counsellor for a debt review. Credit providers may elect to file legal action to enforce credit agreements against defaulting customers when they have not initiated consulting a debt counsellor. Prior to enforcement under Part C of Chapter 6, the credit provider is obligated to tell consumers, under section 129 (1) (a) of the Act they can, among other things, seek

a debt counsellor. As detailed in section 85, consumers can also bring the issue of over-indebtedness to court.

Regardless of any provision of law or agreement to the contrary, section 85 allows the court the option, in the event a consumer is claimed to be over-indebted under a credit agreement, to refer the case directly to a debt counsellor when a credit agreement is being reviewed in court. Under section 86, the latter is requested to analyse the consumer's situation and make a recommendation to the court regarding the consumer's situation. The court may also decide the consumer is over-indebted and assist in resolving the over-indebtedness by issuing any of the directions described in section 87.

In *Standard Bank of South Africa Ltd v. Hales*, the defendant (consumer) invoked over-indebtedness as a defence, per section 85 of the NCA, preventing the plaintiff from successfully foreclosing on a mortgage bond (Southern African Legal Information Institute 2009). As section 85 of the NCA states, the court discussed its discretion to refer a case to a debt counsellor. First, the court discovered section 85 (a) permits a court to request a recommendation from a debt counsellor where, (1) the court proceedings concern a credit agreement and (2) it is alleged during such proceedings a consumer covered by the credit agreement is over-indebted. In the existence of these two reasons, the court may send the case to a debt counsellor, who will make a recommendation to the court in line with section 86 (7) of the NCA. Yet, for the legislature to use its discretion, it did not enumerate particular considerations to be examined by the court in this respect.

The stated aims of the NCA in section 3 and other relevant parts, according to the court, are designed to serve as a backdrop, against which the court must use its discretion (Southern African Legal Information Institute 2021, *First Rand Bank Ltd v Olivier*). After concluding consumer protection is not the main or major goal of the NCA, the court stated there must be a balancing act of rights and obligations of both consumers and credit providers. Due to the current circumstances, the court declined to submit the case to a debt counsellor, indicating it was impossible to prolong the mortgage bond debt further or for the consumer to regain financial stability following another suspension of payments. In fact, the court stated a further extension might raise the debt more in the absence of a financial recovery. The court



noted in its summary, based on factors such as the circumstances of the debt, the financial conditions of the parties, and the amount of the debt, it may refer a matter to a debt counsellor.

It should be highlighted a court alone has the authority to consider a consumer to be overindebted and to issue a debt restructuring order. A debt counsellor is only permitted to perform a debt assessment to assess a consumer's level of debt and whether reckless credit has been provided.

## **2.13 Institutional Impact of the NCA**

According to DeNicola (2019), the credit industry has significantly succeeded in regulating retail credit through implementation of the NCA, and its effects vary from one stakeholder to another. This section analyses how the Act affected these stakeholders.

### **2.13.1 Credit providers**

With the introduction of the NCA, the credit process for credit providers has fundamentally changed. Credit provider input was crucial in the run-up to the NCA's implementation, to ensure compliance when it went into effect. In SA, the major banks spent millions of rands on implementation (NCR 2012).

Subsequently, the cost of compliance increased in the credit-granting process; legal costs increased as quotes and pre-agreements were introduced, agreements were re-written to comply with the NCA; and legal costs of familiarising oneself with the implications of a new piece of legislation, including the pursuit of test cases; as well as the debt counselling function, which previously did not exist within credit providers organisations; industry engagement concerning the implementation and workings of this Act; and staff skills and training requirements.

There was a reduction in revenue as well, because of stricter credit assessment criteria, which resulted in a lower approval rate. Credit product costs were capped, with the maximum cost for an unsecured loan now R1 000, plus value added tax (VAT) and the maximum fee for a microloan at R5 000, plus VAT (NCR 2012). In the past, the Usury Act set a maximum interest rate cap. However, micro-lending remained largely free from such restrictions, allowing interest rates to be charged at any level.

A risk reduction was also observed, due to the implementation of stricter credit assessment criteria, which resulted in fewer consumers unable to repay their debt, ultimately leading to bad debt write off costs for the credit provider. Nevertheless, credit providers received more detailed credit bureau information, thus providing improved insight into consumers' total debt situation. In addition, debt counselling was introduced to providers for a faster resolution to non-payment, thereby limiting recovery costs and working toward (partial) repayment of outstanding debt (NCR 2012).

### **2.13.2 National Debt Mediation Association (NDMA)**

The NDMA, one of the new organisations formed because of the NCA, has more than 250 credit providers as members, as of December 2020. According to the NCR Final Report 2020 (2012: 34), the NDMA is not a regulatory body, however, it does aim to facilitate debt mediation by establishing rules and standards for the process. This debt mediation also deals with grievances of credit companies' conduct throughout the debt counselling procedure. Moreover, the NDMA strives to increase credit knowledge and motivate customers to communicate with their card companies prior to seeking debt counselling, to explore all available possibilities for relief.

The debt mediating association is a partnership between credit providers, to enable interactions with all other industry players and a coordinating organisation for rule, standard, and procedure implementation. The NDMA also functions as a complaints centre, offering information and resolving issues with its members through mediation or referring them to statutory agencies such as the NCR, NCT, and Credit Ombud, as well as being a regulatory body that supervises compliance with the credit code of conduct (NDMA 2018: 1).

### **2.13.3 Credit Bureaus**

Because of the position credit bureaus play throughout NCA systems, they have become more significant within the sector. One of their responsibilities is to facilitate and enhance consumer involvement, in order for customers to check their credit history and interrogate/question any information contained within it. In this regard, the Act stipulates a consumer is entitled to a free, annual credit report viewing.

#### **2.13.4 Debt Counsellors**

Assisting the client with the debt review process is the debt counsellor's responsibility. Although there are many types of experience required, there are only a few, specific credentials. After the inception of this profession, there has been a substantial degree of voluntary de-registration. One of the main causes has been the difficulty in managing the legislation and legislative process, when the debt counsellor has no legal training and does not have access to in-house legal counsel in the company with which they are associated. Another major factor in this has been the complexity of the laws and the legislative process (NCR 2012).

Debt counsellors in SA have formed the Debt Counsellors Association of South Africa (hereinafter "DCASA"). The Association's statute protects customers from unfair, unlawful, or discriminatory practices by credit providers, their representatives, or other debt counsellors, and notifies the NCR of any unfair practices connected to the negligent granting of credit to consumers. It acts as a centre of excellence and a supplier of programmes and training to prepare its members to be effective debt counsellors, while also taking any steps thought desirable, to further the interests of its members (DCASA 2019).

#### **2.13.5 Employers**

DCASA (2019) emphasises the employer as a key player in the overall process. After the NCA's introduction, the Association observed an increase in employer participation, with regards to workers experiencing financial difficulties. There is a link between an employee's level of financial concern and his productivity, since employees spend time at work dealing with the consequences of their financial situation. Financial concerns cause absenteeism, employee evasion, and even theft. The expense of managing workers' financial concerns, such as pay deductions and garnishee orders, place added pressure on the company, as well as workers, who may also leave to access retirement assets, in order to pay off obligations.

#### **2.13.6 Payment Distribution Agency (PDA)**

Once a consumer's debt situation has been restructured, debt counsellors are not allowed to collect and distribute payments to creditors (Debt Collection Act 114 of 1998); payment distribution agents oversee this. On the one hand, while an important part of the process, these agents are the only not formally regulated by

the NCR. On the other hand, the NCR has accredited PDAs mandated with the oversight of collecting consumer repayments and distributing them to credit providers, per the restructured agreements (NCR 2012).

### **2.13.7 Codes of conduct**

The standards of behaviour for lenders, debt counsellors, and payment brokers have drafted and accepted for their respective roles, demonstrate the level of engagement in place and the detail level industry has gone into, to clarify the framework with regard to managing the NCA (DTI 2010). There are three different codes of conduct in effect; Code of conduct for the credit industry to combat over-indebtedness in accordance with Section 48 (1) (b) of the NCA; code of conduct for debt counsellors; and code of conduct for Payment Distribution Agents (PDA).

### **2.13.8 Cost of credit**

There are several fees associated with debt counselling, as detailed (Table 2.3) below.

**Table 2.3: Cost of Credit Structure**

Upfront application fees	R50
Debt restructuring fee	up to R6 000
After care fee	5 percent of repayments up to maximum of R400 for the 1st 24 months, reducing to 3 percent with a maximum of R400 thereafter
Sheriff's fees	R120 per credit agreement (or provider if debt counselling has been centralised at provider)
Legal cost	On a case-by-case basis R2 500+
PDA costs	R7.98 to R27.50, depending on the amounts

**Source: Goodwin-Groen and Kelly-Louw (2008)**

### **2.13.9 Juristic consumers within the NCA**

According to the NCA, a juristic person is any partnership, association, or other group of people, whether they are corporations or unincorporated, as well as a trust if there are three or more individual trustees or if the trustee is a juristic person in and of herself, but not a stokvel (National Credit Act No. 34 2005). Pillay (2009) views the NCA as primarily a consumer protection law, applied only to individuals and not to other entities, with the exception of the regulation of interest and financial charges against legal businesses. The NCA provides a variety of consumer protection measures to small juristic persons, who earn or possess assets of less than R1 million each year. Contrarily, all juristic persons are not protected from usurious interest rates and other financial charges under section 6 (d) of the NCA.

Previously, whether borrowers were juristic or natural individuals, interest charged on all debtors was governed in the same way by the Usury Act; repealed by the NCA on June 1, 2007. Financial and interest costs are now governed by the NCA under Chapter 5, Part C.

### **2.13.10 Debt collection**

The Debt Collectors Act 114 of 1998 governs the debt collection profession in South Africa (Debt Collectors Act No. 114/1998). The Act provides for the establishment of a debt collectors' council, to oversee and control the debt collector's profession and its inherent functions. The code of conduct, which sets a standard comparable to international standards, was published in the Government Gazette in 2003. The Credit Ombudsman (2020) stated debt recovery can only be done for the legally owed amount, interest, and costs. The debt collector's representation must be truthful and factual, including the process being followed as the legal position.

The code of conduct establishes the acceptable methods and hours for contacting debtors, as well as the prohibited methods and periods, such as using the telephone. Harassment and violence are clearly forbidden, as is disclosing information to anybody not a party to the transaction, such as employers or family members. Threats to divulge information are also forbidden. The code of conduct stands out, because it seems to strive to address the excesses this profession may experience, yet, it lacks regulations pertaining to the actual performance of its tasks, namely the sharing of information between credit providers and debt collectors.

The NCA does not address debt collection methods and is silent on the subject. This creates a regulatory vacuum, particularly when credit control and collection are outsourced to a third party by the credit provider.

## **2.14 Borrower Awareness regarding NCA Provisions**

The NCR is also in charge of educating the public on consumer credit concerns and how the South African consumer credit market operates. Through public awareness, education, and information campaigns, the NCR is anticipated to accomplish this. Further to this, the NCR is also expected to provide guidelines to the credit market, by issuing explanatory notices detailing its procedures or by declaring a non-binding opinion on the interpretation of any NCA provision. It can do so by seeking a declaratory order from a court on the interpretation or application of any provision of the NCA. The NCR is responsible for tracking socio-economic patterns of consumer credit activity, as well as identifying factors that contribute to over indebtedness, as along with the patterns, causes, and consequences of over indebtedness.

According to research, there has been a greater understanding of the NCA and the NCR over the past few years, particularly among low-income consumers (NCR 2012). Debt counselling and its benefits were seen gaining popularity.

### **2.14.1 New and improved borrowers' rights**

The South African financial sector has undergone transformations over the last two decades, as Peters (2009) confirms. As a result of the apartheid system, the South African financial sector has been severely distorted (South Africa, National Treasury 1994). Inefficient financial practices were put into place by the apartheid administration prior to 1994, and a sizable segment of the South African population was denied access to official credit. Due to this, only a portion of South Africans profited from these measures, which had a limited influence on market competitiveness (Kirsten 2006: 2). Due to a lack of default literacy, low-income earners continued to be victims of credit default in a market driven by variable interest rates (Mkukwana 2012: 13).

The NCA was enacted to bring about stability in the credit market and is applicable to all types of credit transactions. The Act specifies many objectives, one of which is to establish new and improved credit consumer rights. Van Heerden (2008: 28) stated the NCA is a unique piece of legislation, since it is a binding contract that

enables all credit transactions to be managed and governed by a single Act. The Act helps customers before they sign a credit arrangement, by empowering them with the information they need to manage their debt and comprehend the repercussions of missed payments.

Together with the advantages, the Act ensures all associated transactions are open, fair, and simple to comprehend. Furthermore, it allows consumers the opportunity to ask questions and request further explanation where appropriate (Pillay 2009: 2). Consumers are further protected by the NCA against financial institution fraud and prevented from signing credit agreements not in their best interests.

#### **2.14.2 Additional consumer benefits: to eliminate challenges and risks**

Consumers did not comprehend the total cost of borrowing, due to the credit provider's misleading credit disclosure. Under the NCA, unjust credit practices were eliminated. As Davel (2007) stated, credit quotations and advertisements are mandated to clearly display instalment amount and total amount of all instalments and number of instalments. Insurances applicable, interest fees and any residuals must also be displayed in a font size not smaller than the average font size of the advert. The purpose of this, is to ensure the credit user is completely informed of the cost of credit once it has been paid off in full, including all accessories. The NCA wants to provide credit users more advantages.

First, because the credit access procedures are perceived as not user-friendly, with the high illiteracy level among the population preventing their understanding of these measures (Kotze and Smit 2008). Second, customers were exposed to deceptive advertisements or quotations that frequently concealed the full cost of borrowing, while many were unaware of their credit standing or their consumer rights (Van Heerden 2008: 30). Therefore, the NCA was initiated to protect consumer rights. The new, enhanced banking consumer rights are one benefit of the NCA (BASA 2019).

These rights were severely curtailed before the NCA was introduced, with banks not required to provide customers an explanation for their decisions. The following rights are among those granted to credit consumers by the NCA:

- the right to apply for credit.
- the right to know why credit was refused.

- the right to receive information in an official language.
- the right to information in a plain and understandable language.
- the right to receive documents; and
- the right to confidentiality (National Credit Act No. 34 of 2005).

### **2.14.3 Awareness workshops**

Educational and awareness activities were conducted during the 2019/20 fiscal year, reaching many consumers in various parts of the country, including rural and peri-urban areas (NCR 2020: 38). A variety of interactive and awareness programs were delivered to educate consumers of their rights and responsibilities, as outlined in the NCA, including workshops, exhibitions, industrial theatre, and media campaigns, with education the goal. Due to the COVID-19 pandemic, the NCR did not hold any workshops during the 2020-2021 and 2021-2022 fiscal years.

During the period 2019/20, the NCR conducted a total of 620 educational activities (NCR 2020: 38). Workshops, exhibitions, broadcast, and industrial theatre, as well as mall activations, meetings, media interviews, and community outreach programmes were among the activities; either self-initiated or conducted in collaboration with other stakeholders. Although the NCR previously relied on invitations to attend workshops, it has been successful in initiating and hosting some events. More than 120 of the 620 educational activities focused on educating consumers regarding misleading and deceptive practices in the credit industry, addressing over indebtedness, and promoting consumer rights.

Other awareness programmes are also conducted by the NCR. For instance, the NCR was able to quickly reach as many people as possible across the nation by mass media, discussing a wide range of subjects, including debt counselling, financial instability, budgeting, and credit information, as well as credit bureaus. Consumers were educated via the use of several television and radio stations, including SABC 1, eNCA, UKhozi FM, and Lesedi FM, as well as Motswedding FM, Ligwalagwala FM, Giyani Community Radio, and others.

The NCR activities, particularly the court cases it brought, and the enforcement actions it took, were front-page news in the media, allowing the NCR and the NCA to become more well-known, because of the media/news coverage. In addition, the



business media covered the NCR's statistical reports on the state of the credit industry and credit-active consumers extensively.

The NCR staged stakeholder engagement and community outreach through “izimbizos” in partnership with local tribal authority. An “imbizo” is a traditional African word in the Zulu and Xhosa languages that refers to a summons or calling by the king or a traditional leader, to gather together/attend a community meeting [imbizo – singular/ izimbizos – plural] (Mabelebele 2005: 103). During the year 2000, according to the Government Communication and Information Service (GCIS) Imbizo manual (2005: 25), “the Cabinet decided Imbizo, as a style of interactive governance and communication, should be adopted to promote increased dialogue between the government and people without mediation.”

To inform customers in rural and peri-urban regions with regard to their rights and obligations, credit insurance, and other facets of the NCA, the Imbizos were developed. The NCR Annual Report for 2020 states, over the 2019/20 fiscal year, seven imbizos were held in the Eastern Cape, Limpopo, and KZN, while none were conducted during the 2020/21 and 2021/22 financial years.

The NCR also used advertising campaigns with a goal to raise consumer awareness and education regarding consumer rights, debt counselling, misleading and unfair credit practices, credit bureau information, and spending, borrowing, and budgeting wisely. The NCR has launched various campaigns. Even though each campaign had a different goal, they all shared the same vision to be “Be Credit Smart”.

- A. Consumer Rights (2019) - “Protecting Consumers against abuse”
- B. Consumer Rights (2020) - “Know your consumer rights to be protected”.
- C. Debt Counselling – “Financial freedom is within your reach!”
- D. Black Friday – “Don’t let Black Friday lead to a blacklisting”.
- E. Spend Wisely
- F. Borrow Wisely
- G. COVID-19 (2020-2021) - “Avoid Panic Buying”, “Don’t let panic buying lead to over indebtedness”.

The NCR developed a marketing plan using additional platforms and media channels to reach more people. This strategy ensured high impact advertisements

were delivered to the correct target audience, as outlined in the NCR Annual Report, while remaining affordable (NCR 2020).

#### **2.14.4 Financial Intelligence Centre Act No. 28 of 2001 (FICA)**

Personal documents are required by the credit provider before potential borrowers are granted credit. A verification process is used to route these documents. FICA compliance is the name given to the process of verification, with FICA governing the South African Financial Intelligence Centre. This Centre was established to combat money laundering and to impose reporting requirements on responsible institutions, such as credit providers.

FICA obliges responsible institutions to follow the following requirements, according to De Koker (2004: 715-746), the duty to identify clients, the duty to keep records and the duty to report. The FICA establishes several reporting requirements, consisting of the disclosure of cash amounts, as well as suspicious, and irregular transactions. In addition to these responsibilities, the Centre must provide information gathered to investigating authorities, in order to verify information and identify any illegal transactions. As a result, the Centre serves as a data repository for financial transactions.

#### **2.14.5 Credit Bureau Association (CBA)**

The CBA is a non-profit industry organisation that represents 18 of South Africa's registered credit bureaus (Credit Bureau Association 2022). The CBA is not a credit bureau; it is a trade organisation credit bureaus as members. Credit bureaus are businesses that collect and store information concerning a consumer's credit history, for example Experian, TransUnion, and VeriCred, to name a few. Each credit-active consumer will have a bureau profile, and credit providers will use this information to evaluate credit applications. The CBA mandate is to provide a framework of standards and policies in SA to protect consumer credit information and ensure fair and good practice in the consumer credit industry.

#### **2.14.6 Protection of Personal Information Act No. 4 of 2013 (POPIA)**

The need for rules protecting personal information and the right to privacy was driven by the rise in incidents of identity theft and misuse. The Protection of Personal Information (POPI) Act or POPIA, sets forth basic requirements for accessing and processing the personal information of another person. According to this Act,

processing includes gathering, receiving, recording, and organising, as well as retrieving, using, disseminating, or transmitting any such information. The remaining sections of the POPIA, passed into law in November 2013, were supposed to go into effect on 1 April 2020, but were delayed due to the Covid-19 outbreak and the urgent necessity to refocus efforts. Certain portions of the POPIA were, however, inaugurated through a proclamation issued by the president on 22 June 2020, becoming operative on July 1 of that same year.

The definition of personal information is any information that can be used to “identify a person, such as a person's name, surname, identification number, contact number, email address, religion, medical history, education, financial information, or any other information that is unique to a person” (South Africa, Protection of Personal Information Act 2013). All South African organisations and individuals who can obtain, manage, and store the personal information of another individual, whether as part of their employment or as suppliers or service providers, must follow POPIA requirements and put safeguards in place. In addition to reputational damage and any civil damages claims, failure to comply might result in punitive fines of up to 10 million rands, ten years in jail, or a combination of the two.

## **2.15 The Current State of South Africa’s Credit Market**

Since the Covid19 pandemic impacted finances, the South African consumer credit market remains in a recovery stage. TransUnion's most recent research (2022) covers a time in SA when unemployment was at a record high and the country's Gross Domestic Product (GDP) decreased (Stats SA 2020), where major consumer credit market indicators reflect these macroeconomic trends. Data show all significant consumer credit categories experienced declines in originations and inquiries, two indicators of consumer demand. At the same time, delinquencies for most products continued to rise, except for credit cards, which saw a slight improvement. A hike in missing payments was another factor that contributed to an increase in outstanding balances across most product categories (TransUnion 2022).

Analysis suggests that where lenders are approving new credit card accounts, they are targeting less risky customers. Financial institutions are being extremely cautious, particularly with regard to issuing new credit cards (TransUnion 2021). The

proportion of new credit card originations going to super prime clients, nevertheless climbed by six percent, from 57 to 63 percent, in the second quarter of 2022, compared to the same time in 2021. This was much higher than the 48 percent recorded in 2019. Furthermore, the average credit limit for cards grew 14 percent year-on-year (YoY) as a result of a stronger emphasis on lower risk clients for new credit card openings (TransUnion 2022).

Williams (2021) asserts, due to the current economic circumstances and continued strain on household budgets, both consumers and lenders remain cautious regarding credit. In other markets throughout the world, consumers are facing challenging decisions on which debts to prioritise. Although annual trends indicate a difficult credit market, a path to recovery is noticeable from the most recent quarters.

Product	YoY % Change in Enquiries	YoY % Change in Originations <sup>(1)</sup>	YoY % Change in Total Outstanding Balances	Serious Delinquency Rate <sup>(2)</sup>	YoY Basis Points (bps) Change in Delinquency Rate
Credit card	-52.8%	-63.2%	-0.6%	12.0%	-10
Bank personal loans	-2.3%	-39.6%	5.9%	23.5%	+130
Non-bank personal loans	-15.1%	-26.0%	2.7%	32.5%	+640
Home loans	-23.5%	-14.2%	6.1%	6.8%	+230
Vehicle finance	-38.7%	-6.0%	10.2%	7.1%	+20

**Figure 2.4: Q2 2022 Metrics for Major Consumer Credit Products**

**Source: TransUnion Industry Insights Reports Q2 2022**

According to Figure 2.4, the Q2 2022 originations were down YoY across all major credit products. The quarterly movements of all significant consumer credit categories, except for credit cards, improved when compared to the YoY reductions observed in earlier 2021 quarters.

In Q2 2022, new vehicle finance loans experienced the smallest YoY decline of minus 6.0 percent. It was a significant improvement in annual trends compared to the YoY drop of minus 53.7 percent in Q2 2021, which followed the economic impact of the first wave of COVID-19. Similarly, home loans, a major secured lending

category, fell by minus 14.2 percent YoY in the most recent quarter (minus 62.4 percent YoY in the previous quarter). These are encouraging signs of a recovery in credit market demand and supply. While a significant amount of recovery is still required to return to pre-pandemic levels, the consistent trends in new auto and mortgage loans observed in Q4 2021 are encouraging.

Credit card originations, on the other hand, fell by two-thirds (minus 63.2 percent) YoY in Q2 2022 (YoY Q1 2022 being minus 23.1 percent). Personal loan originations at banks (minus 39.6 percent) and non-banks (minus 26.0 percent) fell at a slower rate than the previous quarter, despite remaining significantly lower YoY (YoY Q1 2022 bank personal loans, minus 60.9 percent, non-bank personal loans minus 51.1 percent).

According to Williams (2021), during Q4 of 2021, the credit market saw a growing divide between secured and unsecured lending categories. Notwithstanding all consumer credit categories had negative yearly origination growth, the rate of decline for secured lending products was much slower. The reason for this, is the long-term nature and utility of the purchases financed by these loans, as shown by customers continuing to require houses and automobiles.

The distinction between secured and unsecured credit metrics represents the wide income disparity across the country, as well as the fact those financially unaffected by the pandemic still had significant purchasing power. In addition, as with their unsecured counterparts, these groups had lower underlying decline rates and offer lenders protection against default through collateral. In addition, secured products are granted to consumers with lower credit risks, who are less likely to default and more capable of handling financial shocks. Williams (2021) states these factors are driving the faster recovery of secured lending products.

Most product categories saw an increase in outstanding amounts, attributed to customers' greater reliance on credit, as well as their repayment pace. The recent increases in inflation led to larger amounts for newly generated loans. Williams (2021) emphasised, while delinquency rates rose, a portion of the growth in balances across the majority of categories was brought on by accumulated interest on unpaid accounts. The only category of consumer credit products with no growth in percent and a reduction in delinquencies, was credit cards. Delinquency rates for

vehicle financing credit were unchanged over this time, increasing by barely 20 basis points. The constant performance of these two categories in comparison to others, indicates South African consumers' financial priorities throughout the pandemic, which were to protect the use of credit cards and the practicality and perceived safety of private automobiles.

As the credit market navigates through the current crisis, Williams (2021) concludes consumers' payment priorities are becoming even more defined. To accommodate increasingly difficult household finances, credit providers must constantly monitor and adjust their underwriting criteria and portfolio risk management strategies. Trended and alternative data remain the finest tools available to credit providers for identifying changes in consumers' financial behaviours. By using these lessons, they are better able to foresee potential outcomes and frequently, step in to assist clients before their situation deteriorates. Simultaneously, lenders can take advantage of new data and insights gleaned from the recent crisis to lend to more resilient customers and ensure a healthy, balanced approach to portfolio growth.

## **2.16 Conclusion**

There is consensus from literature that credit business has been significantly impacted by the NCA in a variety of ways. Both credit providers and consumers have gained awareness because of the Act's objectives and goals. This chapter revealed both consumers and providers of credit are protected from becoming overindebted according to the Act. A review of the literature indicates unfair credit practices and NCA involvement need to be examined. In chapter three, the research approach used for this study is explained in-depth.

## **CHAPTER THREE**

### **RESEARCH METHODOLOGY**

#### **3.1 Introduction**

The previous chapter discussed South Africa's credit market history, the challenges and risks borrowers face in connection with unpaid debts and raised awareness of NCA provisions. This chapter outlines the study research design, which comprises quantitative techniques. The sampling design and methods selected for data collection and analysis, as well as ethical considerations, are presented, with measures taken to ensure reliability, validity, and confidentiality also described. The discussion begins with a recap of the research aims and objectives.

#### **3.2 Purpose of Research**

Conducting research is a deliberate quest for information. In other words, it is the process of investigating the problem under study (Graziano and Raulin 2013: 30); it is the process of studying the research problem. A methodological approach is employed by researchers as a process of inquiry and as a way of comprehending and understanding how data are measured, selected, collected, analysed, and reported (Neuman 2011: 16-29). A survey approach was used in this study to investigate unfair debt practices, borrower challenges and risks associated with unpaid debts, and the role of the NCA in the eThekweni Metropolitan area.

#### **3.3 Research Design**

The study was based on a quantitative research method. This method allowed the researcher to quantify behaviours, attitudes, and other variables and generalise from a larger population (Creswell 2013: 14). Furthermore, this method made use of quantifiable data to express facts, uncover patterns, and understand relationships between independent and dependent variables in a population (Creswell and Guetterman 2019: 212). This research method is appropriate because it assisted in identifying and quantifying the challenges that borrowers faced in relation to unpaid debts and debt practices in the eThekweni metropolitan area.

Tax theory was effectively tested using tax brackets and tax rebates as instruments, in addition to identifying the number of respondents that defaulted on repayments,

were under administration, or blacklisted. With this method, it was less expensive to create samples and the costs of conducting research were low.

### **3.4 Target Population and Sample Selection**

This section discusses the research population and sample for this study. The sample design, sampling techniques, and sample size are detailed further below.

#### **3.4.1 Target population**

The target population is a particular group from which a researcher selects a sample, and ideal generalisability for the sample findings would mean they apply to the entire population (Neuman 2011: 16-27). The research was conducted in the eThekweni metropolitan area and focused on residents that lived and worked within. Participants were recruited by asking whether they are residents of the eThekweni metropolitan area. Following a positive response, they were formally asked to participate in the study.

The researcher selected eThekweni to conduct research because:

- There has not been much research into unfair debt practices, challenges and risks faced by borrowers, and the role of the NCA.
- According to the most recent data in the South African report by the Department of Statistics South Africa (2021: 76), eThekweni is the KZN province's economic centre and generates R16 of every R100 produced by the national economy.
- EThekweni is a place with diverse racial groups, which will diversify findings to accommodate everyone (NCR 2019: 4), and
- EThekweni is a place in KZN where there is a high number of consumers with active credit accounts (NCR 2019: 4).

Nardi (2006: 109) affirmed the next step after defining the target population, is to compile a list of that population and choose a sample from the sampling frame. Sample design, techniques and size are discussed below.

#### **3.4.2 Sample design**

A sample design, which refers to the method or technique the researcher uses to select the sample, is defined as a blueprint plan for selecting a sample from a given population (Cooper and Schindler 2014: 84-85). According to Kumar, Mohri and Talwakar (2011: 180-181), the process of sampling also involves collecting data



from a small portion of a population, in order to draw generalisations or conclusions regarding the entire population. The sampling methods, sample size, response rate, and demographics of the sample respondents are all included in the sample design for this study. The discussion that follows begins with the study sampling methods.

### **3.4.3 Sampling techniques**

Given the various and overlapping types of sampling available, sampling is described as a complex technique. Hyberts, Arthanari and Wagner (2012: 125-148) explain samples can be classified as obtained through probability or non-probability sampling. Probability sampling is a technique that employs a random selection method, in which each item has a calculable chance of selection, ensuring minimised sampling error, and researcher judgment is limited (Bryman 2011: 188). Furthermore, Graziano and Raulin (2013: 323) confirm the probability sampling method increases confidence in the sample being representative of the population.

Non-probability samples, however, allow for a choice in determining who or what is selected in the sample. Furthermore, Argerich and Cázares (2017: 310-313) argued non-probability sampling designs are used when the number of parts in a population is either unknown or cannot be identified independently, and is dependent on other factors, also known as deliberate sampling, purposive sampling, or judgement sampling.

Judgemental sampling goes on to describe how a researcher uses their own judgment to select items considered representative of the population and to determine who can deliver the appropriate knowledge in achieving the objectives of a study, by approaching respondents likely to have the required information and eager to share it with the researcher (Argerich and Cázares 2017: 45).

This type of sampling is used in both quantitative and qualitative research methods but is more commonly used in qualitative research, when describing a phenomenon or gathering information about a little-known topic. It is also understood the possibility of any individual being included in the sample cannot be calculated with non-probability sampling (Hyberts *et al.* (2012: 92). This implies some population units are more likely to be selected, allowing the researcher to determine the elements for inclusion in the sample.

A non-probability sampling method was used, with a convenience sampling technique as a method of sampling data and a sampling frame of being over 18 years of age, having made credit before or having an active credit account. With this research method, respondents were selected by the researcher based on their willingness and availability to participate in the study (Creswell and Guetterman 2019: 143). The sample can provide useful information for addressing questions and hypotheses.

This sampling method is appropriate because convenience sampling data is easy to obtain, since only willing and available respondents will participate. Creswell and Guetterman (2019) states it is, furthermore, inexpensive compared to other alternative methods, as this research has a limited budget. To eliminate sampling error, equal samples were taken from all tendencies for variables, to ensure representativity of samples.

#### **3.4.4 Sample size**

The number of items selected from the population is considered to be the sample size (Hyberts *et al.* 2012: 92), however, it must be ensured the sample size is neither excessively large nor too small. This will satisfy the requirements of effectiveness, representativeness, reliability, and flexibility, as well as costs, when determining the factors to choose the sample size. To produce reliable and valid conclusions, the sample should accurately reflect the features of the sample without bias. Since the researcher lived in Newlands West and there were financial restrictions, both an electronic and a paper-and-pencil questionnaire were employed to reduce travel expenses as much as possible.

The survey questionnaire was distributed to a sample size of 208 responders, excluding pilot study respondents. Hard copy questionnaires were distributed to 45 participants and 163 were sent the online questionnaire, yielding a 100 percent response rate.

#### **3.5 Data Collection and Analysis**

The data were gathered through a review of the literature and distribution of the questionnaires. The research questions and problem statement, as well as the study aims and objectives directed the questions posed to respondents. Self-completion questionnaires were used to collect primary data. The secondary data collection

method is discussed first below, followed by the primary data collection methods and instruments.

### **3.5.1 Secondary data collection method**

Secondary data comprise information already collected and analysed statistically (Hyberts *et al.* 2012: 17-18). In the current study, these data sources included national government publications, credit legislation bodies and their subsidiary organisations, technical and trade journals, as well as books, industry and corporate magazines, newspapers, and reports and publications of various credit industry stakeholders, along with reports prepared by research scholars and universities.

A thorough review of literature in SA and around the world on unfair credit practices, challenges and risks faced by borrowers in connection with unpaid debts, and the role played by the NCA, was used to gather secondary data. The review of the literature concentrated on the most credible, relevant, and up-to-date findings in this field of study, including books, journals, articles, and websites, along with corporate literature from various institutions and perspectives.

The literature was collected to enhance knowledge and understanding of the subject matter, gaining fresh perspectives, identifying theories, practices, roles and responsibilities, as well as other relevant data that would enable developing a proposed framework to help South African consumers understand the NCA, its role, and its provisions. The first step in the data collection process was the literature review, followed by the collection of primary data using both paper and electronic questionnaires.

### **3.5.2 Primary data collection method: Questionnaire**

The researcher used a questionnaire as a strategy for collecting primary data. A questionnaire is simply described by Goddard and Melville (2007: 43) as “a printed list of questions which respondents are asked to answer.” These authors identify closed (or structured) questions for large scale data collection, where respondents choose from either a ranked set of responses, or a collection of alternatives, or a combination of both, as was the case in the current study.

A letter of information and consent that briefly described the institution represented accompanied the questionnaire, stating the study aims and objectives, with general instructions indicating participation was voluntary and withdrawal free, without any

penalties. In addition, respondent anonymity was assured, and contact details provided in the event they had any questions or complaints, as well as thanking them for their participation, at the start of the data collection process.

### **3.5.2.1 Questionnaire design**

According to Martin (2004: 149-179), a questionnaire should be easy to read, appealing to the eye, and have a clearly laid out order of questions. Similarly, this study ensured the questions were well-articulated, with assistance from a pilot study conducted with the questionnaire, to test different aspects of the design. Additionally, Kumar *et al.* (2011: 226) stated the order of the questions matters, because it affects respondent willingness to participate in the study, the quality of the information provided, and their interest in it. This has an impact on how respondents feel with regard to providing the necessary cooperation.

The design of the instrument ensured the layout was simple to read and clear, with the first few introductory questions seeking respondent consent to participate of their own free will. As a result, the questionnaire led respondents gradually into the main sections of the study, in a manner that made sense, considering the research objectives. The questionnaire consisted of four sections, where the first served as an introduction and provided a letter of information and consent, with demographic information requested in the second section. The respondents' credit standing, and employment information were covered in the third and fourth sections, respectively, while their knowledge of credit laws was the subject of the fifth section of the questionnaire.

### **3.5.2.2 Online questionnaire**

As Vasantha and Harinarayana (2016: 6) explain,

“Google Forms is a cloud-based data management tool used for designing and developing web-based questionnaires. This tool is provided by Google Inc10., and freely available on the web to anyone to use and create web-based questionnaires. The anywhere-anytime-access and other advantages (unlimited surveys, 100 percent free) have made Google Forms a popular product in online survey research.”

The online questionnaire for this study was constructed using Google Forms, and it was simple to set up the questionnaire platform on the [www.forms.google.com](http://www.forms.google.com)

website. Considering this study posed less than 30 questions, it was easy to create sections on the Google form, which allowed the researcher to divide questions into manageable sub-sections, enabling respondents to reply to one set of questions at a time, without feeling overwhelmed. A progress bar on the questionnaire form indicated to the respondent how far along they were in responding or finishing a section. To ensure respondents provided a response, some questions were made mandatory, while some questions allowed respondents to skip answering these, should they so desire.

One of the few criticisms levelled at the Google form (questionnaire) is its limited design options, as Google has limited header colours and backgrounds. Even though a colour palette is provided, only 15 colours can be adapted to complement the questionnaire. Furthermore, researchers are using online or internet-based applications to conduct research studies, using surveys and questionnaires in particular, with this trend witnessed across disciplines, including progressive organisations that recognise the versatility of the internet (Wright 2005). People are willing to share data with researchers, which strengthens the case for conducting social science research through online platforms, as interest in alternative data sources grows (Van Selm and Jankowski 2006: 435-456).

The ability to reach thousands of people in a matter of seconds, despite great distances, is another substantial advantage of an online questionnaire (Wright 2005). Further to this, Madubela (2017) argued one problem with online surveys, is that researchers may not know much of the respondents. To avoid these difficulties, the researcher contacted the respondents and informed them beforehand regarding the electronic questionnaires they would receive via email or WhatsApp, with a link to complete.

Robertson, Caldwell, Hamill, Kamen and Whittlesey (2013) additionally emphasise how the methods used to collect survey and behavioural data have changed significantly over the past few years, with a decline in face-to-face and telephone data collection and an increase in digital data collection. Researchers can use mobile phones and other smart devices to collect data in more inventive ways. Moreover, using digital data collection methods enables the collection of a larger sample, increasing data reliability.

### **3.5.3 Pilot study**

Floyd and Fowler (2014: 107) emphasise the need for testing the questionnaire with respondents from the population sample, prior to commencing the main research. To design an effective and comprehensive research study, a pilot test is a crucial component of any research project (Storme, De Vos, De Paepe and Witlox 2020). Piloting the measurement instrument, according to Kiss and Nikolov (2005: 99-150), is a procedure for detecting problematic questions in a questionnaire and correcting the problem before it is distributed to respondents. Furthermore, the pilot test aims to evaluate questionnaire components such as question clarity, response nature, questions left unanswered, and simple to understand questions, as well as how long it takes to complete a questionnaire, and questionnaire design (Kiss and Nikolov 2005: 99-150).

A random selection of 15 respondents from the CBD was based on willingness and availability to participate in the pilot test. In addition, the questionnaire was pre-tested by two academic staff members and pilot-tested by two business professionals with experience in the study field, to receive constructive criticism. The pilot test helped the researcher identify questions with a high non-response rate, allowing either rewording or adding another, more probing question. Additionally, it provided the researcher the opportunity to review the questionnaire format and wording, as well as the order in which the questions were asked.

The primary data collection tool, the questionnaire, has to also be viable and reliable as measurement instrument, as well as confidential. These concepts are discussed below.

### **3.6 Validity**

The term validity, simply stated, “means that the measurements are correct”. In other words, the instrument measured what it was intended to measure, and it measured this correctly (Melville and Goddard 2004: 37).

While Mouton (2012: 100-102) asserts a research design should be tested for validity and reliability, Paparas (2019) maintains validity is established by the measurement instrument’s ability to show the reality of the constructs measured. This makes it essential to ensure the correct measurement tool is used, in order to measure what needs to be measured.

Furthermore, factor analysis was used to examine the validity of quantitative data sample analysis. Bryman (2011: 315) describe factor analysis as a statistical tool, employed to establish whether a tendency exists or the variables are interrelated, with these grouped together, should this be the case. The researcher also considered the relationship between the information provided by the various respondents in their assorted categories.

The questionnaire was pilot tested for validity (accuracy) and reliability (consistency) to anticipate difficulties in answering questions, identify ambiguous terms, and determine whether there was room for improvement. In addition, to ensure quantitative data validity, statistical analysis was performed using factor analysis. The process of informed consent was also employed in this study, which involved disclosing all information potential respondents needed to enable understanding what was disclosed, and the promotion of voluntariness.

### **3.7 Reliability**

Paparas (2019) explains reliability as the consistency with which a specific answer is produced as an aspect of data analysis, while what is measured remains unchanged. This echoes Zohrabi (2013), who stated the reliability of a test is determined by its ability to avoid measurement errors, because test reliability diminishes as more measurement errors occur.

Internal consistency reliability was employed in this study. According to Taan and Hajjar (2018), internal consistency assesses the uniformity of test findings throughout situations/environments and determines how all factors on the test relate to all other factors. In other words, internal consistency is an assessment of the correlation of results, such as from a questionnaire, where questions should deliver consistent responses. In addition, the test does not need to be repeated or other researchers involved, when internal consistency is calculated (Middleton 2023).

This method was considered appropriate for the study, because it allowed the researcher to not only determine credit tendencies among eThekweni residents, but it also created the opportunity to appropriately test the tax theory. While engaging with respondents, the researcher advised a tactful approach to the questionnaire with open and honest answers, which would facilitate response reliability.

### **3.8 Confidentiality**

To maintain maximum confidentiality and anonymity, questions and questionnaires did not require respondents to state their names or any information that could be used to identify them or their script. Hard copies, such as any questionnaire data collected, would be stored for a period of five years in a secured and locked cabinet, to which only the researcher and the supervisor have access. After this time, questionnaires would be shredded. A soft copy of the questionnaire is kept on a password-secured external hard drive that only the researcher and supervisor can access; it would be destroyed after five years.

### **3.9 Ethical Considerations**

In any field of human activity, ethical consideration is critical. Govil (2013: 17-22) stated fundamental research ethics values are universal and include honesty and respect for individuals' rights. Since the study involved using human respondents, permission from the Institutional Research Ethics Committee (IREC) at the Durban University of Technology (DUT) was required. Respondents were informed of their right to withdraw from the study at any time, without fear of being victimised, and participation was completely voluntary.

The DUT code of ethics in research was followed to ensure no offenses were committed during the study or against the will of any participant in any way. The respondents suffered no physical or emotional harm, because they were protected from any form of manipulation or offense. Furthermore, they were all treated equally, respected, and valued for their contributions to participate, and were also informed of the study's ethical research standards.

Considering the sensitivity of the respondents' credit status and the need for professionalism and sensitive boundaries, both during and after the data collection and analysis process, the study was conducted with due diligence. Anonymity and confidentiality were upheld to ensure complete compliance with the highest ethical considerations, as well as the interest and cooperation of all respondents involved in the research; the names and details of respondents were not captured to avoid any data leading to their identification. Respondents were informed their data would be kept private, anonymous, and only be used for the research purpose.



### **3.10 Conclusion**

This chapter commenced with a discussion of the aim and objectives of the study and proceeded to describe the research design, target population, and sample selection. The data collection process and data analysis techniques were also discussed. This involved an in-depth discussion of data collection and analysis in relation to the study ethics, confidentiality, reliability, and validity, as well as pilot testing. The findings are presented in the following chapter, through a discussion of the analysed results in relation to the objectives.

## **CHAPTER FOUR**

### **ANALYSIS OF RESULTS AND DISCUSSION OF FINDINGS**

#### **4.1 Introduction**

Having outlined and detailed the methods and techniques involved in the research process in the previous chapter, this chapter presents and discusses the results of the face-to-face and online surveys. The Excel spreadsheets and Statistical Package for Social Sciences (SPSS) version 28.0 were used to analyse respondent data. Figures, graphs, and cross tabulations are used to present the results of descriptive statistics for quantitative data collected.

#### **4.2 Response Rate**

In total, 208 questionnaires were distributed and returned, yielding 100 percent response rate. Hard copies were hand delivered to 45 participants, while 133 were responded to in an online questionnaire. The data were descriptively analysed using SPSS version 28.0 and Microsoft Excel Spreadsheet.

#### **4.3 The Research Instrument and The Sample**

There were 29 items in the questionnaire, measured at a nominal or ordinal level. The four sections of the questionnaire are:

1. Letter of information and consent.
2. Demographical information.
3. Employment and credit information.
4. Knowledge of credit legislations.

#### **4.4 Reliability Statistics**

Among the most important aspects of precision are reliability and validity (Bryman 2011: 169). To determine whether a measurement is reliable, several measurements should be taken on the same subject. For newly developed constructs, reliability coefficients of 0.60 or higher are acceptable.

Table 4.1 below reflects the Cronbach's alpha score for all the items that constituted the questionnaire.

**Table 4.1: Cronbach's alpha score**

Section	Number of Items	Cronbach's Alpha
5 Type of employment	6	0.773
6 Income bracket	6	0.841
7 Credit amount	6	0.89
10 Credit interest rate	6	0.735
13 Challenges, risk, or consequences of missed payments	3	0.96
20 Choice on credit protection, disability, or retrenchment cover	3	0.94 2
28 Borrower rights under the National Credit Act	3	0.907
29 Awareness about the National Credit Act	5	0.778

As illustrated (Table 4.1), there is a higher reliability score than the recommended Cronbach's alpha value for all sections. In these sections of the research, this indicates an acceptable, consistent level of scoring.

#### 4.5 Factor Analysis

Only the Likert scale items were subjected to factor analysis, which divides specific components into smaller components and achieves data reduction. It is common in survey research to use factor analysis to represent a large number of questions with a limited number of variables (Bryman 2011). The rotated component matrix is shown in Table 4.2.

**Table 4.2: Rotated Component Matrix**

B5	Component 1
Unemployed	0.741
Self-employed	0.762
Contract employment	0.788
Permanent employment	0.812
Retired or retrenched	0.821
Prefer not to say	0.745
B6	Component 1
0 to R5 000	0.758
R5 001 to R10 000	0.898
R10 001 to R15 000	0.871
R15 001 to R20 000	0.845

R20 001 to R25 000	0.757
More than R25 000	0.781

B8		Component 1
0 to R50 000	0.842	
R50 001 to R100 000	0.856	
R100 001 to R200 000	0.844	
R200 001 to R300 000	0.755	
R300 001 to R400 000	0.855	
More than R400 000	0.701	

C22 and C25	Component				
	1	2	3	4	5
Usury Act No. 73 of 1968	0.288	0.275	0.855	0.110	0.098
Credit Agreements Act No. 75 of 1980 and Exemption Notices	0.255	0.257	0.545	0.577	0.108
National Credit Act	0.133	0.178	0.110	0.248	0.902
Consumer Protection Act	0.215	0.232	0.078	0.880	0.285
Newspapers	0.210	0.880	0.185	0.170	0.138
School or University	0.234	0.865	0.199	0.120	0.120
Television	0.820	0.127	0.210	0.057	0.338
Campaigns and Road Shows	0.747	0.080	0.418	0.108	0.148
Books	0.766	0.230	0.120	0.349	0.046

C20	Component	
	1	2
My choice	-0.028	0.998
Given by credit provider	0.926	-0.097
I do not remember	0.935	0.051
Not applicable		

C28		Component 1
Strongly agree	0.776	
Agree	0.867	
Neutral	0.732	
Disagree	0.857	
Strongly disagree	0.889	

With reference to Table 4.2 above:

The extraction method employed was principal component analysis, and the rotation method was Varimax with Kaiser Normalization. With this orthogonal rotation technique, the number of variables with heavy loads on each factor is reduced to a minimum. The factors' interpretation is made easier by this.

Inter-correlations between variables are shown through factor analysis and loading.

Questions with comparable loading suggest measuring along a similar factor. Should items have cross-loaded at greater than this value, the higher or highest loading was used to accurately measure the content of the items loading above 0.5.

Sections B5, B6, B8, and C28 (peach colour) had statements that loaded properly along a single component. This suggests the statements included in these sections successfully measured the objectives they had been designed to achieve.

It is worth noting the variables that comprised Sections C20, C22, and C25 (blue colour) were loaded along two components (sub-themes). This indicates distinct patterns were noted by respondents within the segment. The divides within the section are colour coded.

#### **4.6 Cross-Tabulations**

To determine whether there was a relationship between different variables, cross-tabulations were performed. The traditional method of reporting a result involves a statistical significance statement. A p-value is calculated from a test statistic, and a significant result is shown with  $p < 0.05$ . There is no significant association for any p-value greater than 0.05.

To see whether there was a statistically significant correlation among the variables, a Chi square test was performed in a subsequent stage. According to the null hypothesis, there is no relationship between the two variables. There is, however, a relationship, according to the alternative theory.

As shown by Table 4.2, the p-value between “Borrowers income bracket” and “Credit amount offered” is 0.000. The formulated hypothesis was as follows.

H0: “Borrower’s income bracket” does not play a significant role in “Credit amount offered” by credit providers.

H1: “Borrower’s income bracket” does play a significant role in “Credit amount offered” by credit providers.

As the p-value is less than 0.05, this means there is a significant relationship between the variables highlighted in yellow (Table 4.3). In other words, the borrower’s income bracket did play a significant role in terms of how much credit providers offer to them as credit.

**Table 4.3: Income Bracket – Credit Amount cross tabulation**

**Chi-Square Tests**

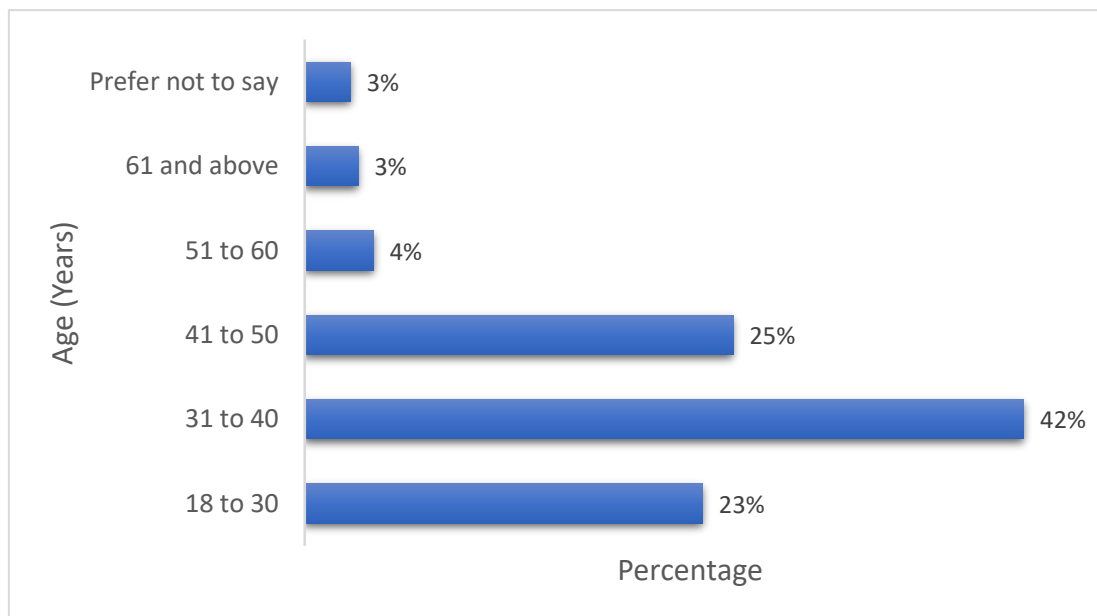
	Value	df	Asymptotic Significance (2- sided)	Exact Sig. (2-sided)	Exact Sig.(1- sided)	Point Probability
Pearson Chi- Square	42.004a	65	0.001	0.007		
Likelihood Ratio	39.807	65	0.001	0.000		
Fisher's Exact Test	33.423			0.000		
Linear-by-Linear Association	1.741b	1	0.187	0.193	0.108	0.023
N of Valid Cases	208					

**4.7 Research Analysis and Discussion**

This section summarises the biographical characteristics of the respondents such as age, race, type of employment.

**4.7.1 Age of respondents**

Respondents were asked to indicate their age. Figure 4.1 illustrates the age of respondents at the time they completed the questionnaire.



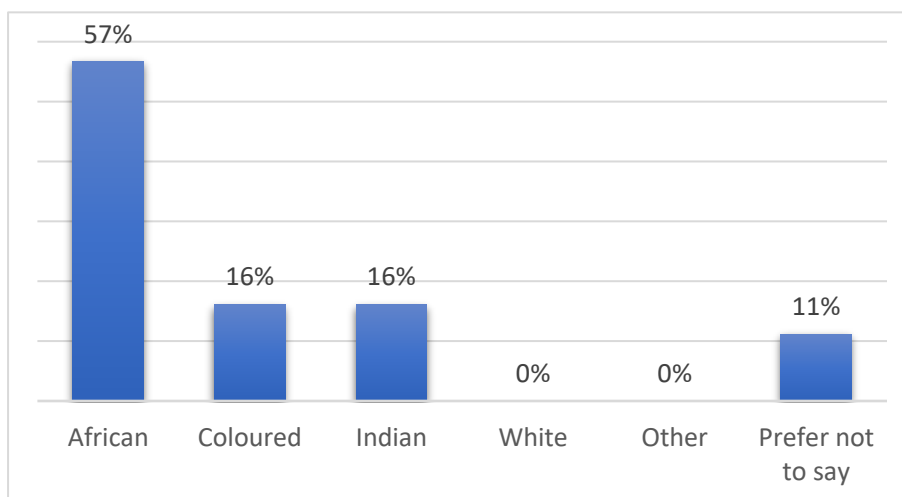
**Figure 4.1: Overall age distribution**

The overall age distribution illustrated (Fig. 4.1) most respondents (42 percent) were between the ages of 31 and 40 years, with 25 percent between 41 and 50 years, those between 18 and 30 years were 23 percent, while those between the age of 51 to 60 years totalled four percent. Ages 61 years and above, and those who preferred not to say were both three percent. The age distributions are not similar, as there are significantly more respondents younger than 40 years ( $p < 0.001$ ).

Understanding a population's age composition provides insights into changing population conditions and can accurately predict social and economic trends. This is a characteristic of age groups, in which people born around the same time and within the same generation, typically share some similar characteristics and ways of thinking. Furthermore, a person's knowledge and experience of a topic or subject are often determined by his or her age (US Census Bureau 2021). According to the findings, the older the respondent, the more likely it is they would have made use of credit in their lifetime.

#### 4.7.2 Racial diversification of respondents

Respondents were asked to indicate their race on the questionnaire. Results are shown below (Figure 4.2).



**Figure 4.2: Racial composition of study population**

As shown in Figure 4.2, African ethnicity was indicated by 57 percent of respondents, while Coloured and Indian represented 16 percent each. White and other were at zero percent and 11 percent preferred not to mention. According to Palmer and Burchard (2020), respondents should reflect the population's cultural

and socio-economic variety, including colour, ethnicity, gender, age. The absence of diversity among study respondents has major ethical and methodological consequences. This includes limiting the ability to generalise study findings and reach informed conclusions that will represent the entire population.

#### **4.7.3 Employment status**

In the questionnaire, respondents were asked to state their employment status. The results are displayed (Table 4.4) below.

**Table 4.4: Employment status of Respondents**

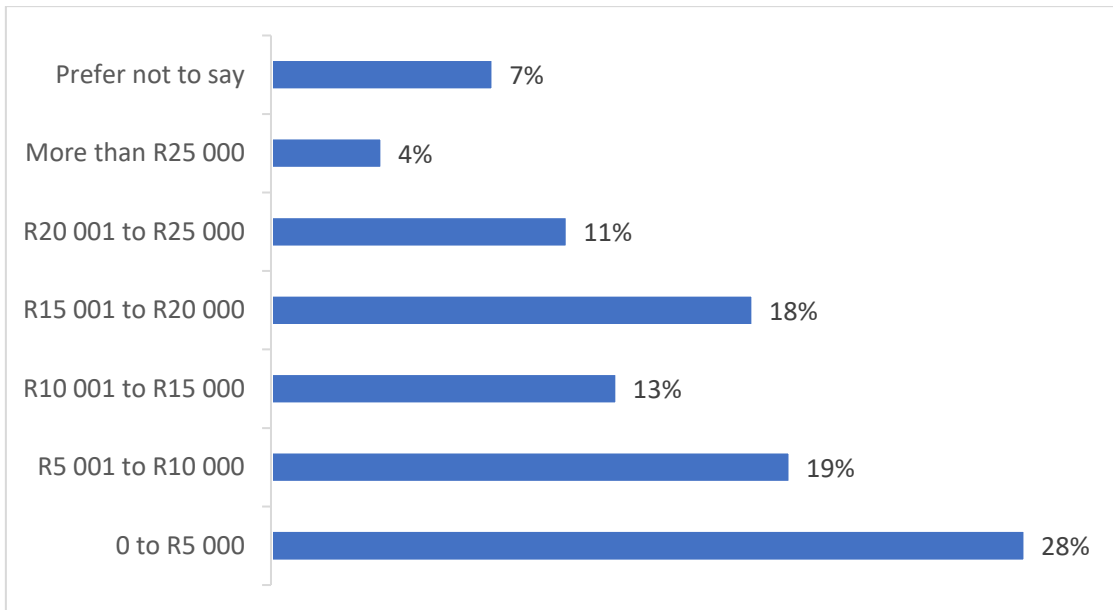
	<b>Frequency</b>	<b>Percentage</b>
Unemployed	51	23%
Self-Employed	34	15%
Contract Employment	37	17%
Permanent Employment	80	36%
Retired/Retrenched	11	5%
Prefer not to say	11	5%
Total	224	100%

Table 4.4 indicates, at the time of the study, 36 percent respondents were permanently employed, 23 percent were unemployed, and 17 percent were on contract employment. A further 15 percent were self-employed, with retired or retrenched at five percent and other five percent preferred not to state their employment status. This data is vital in determining the income source of respondents and examining employment type of respondents with multiple credit accounts. Furthermore, this data assisted in testing the hypothesis for this study.

#### **4.7.4 Earnings of respondents**

To test the hypothesis, gross earnings of respondents are important to consider, with respondents required to state their gross earnings in this section. Below are the results.



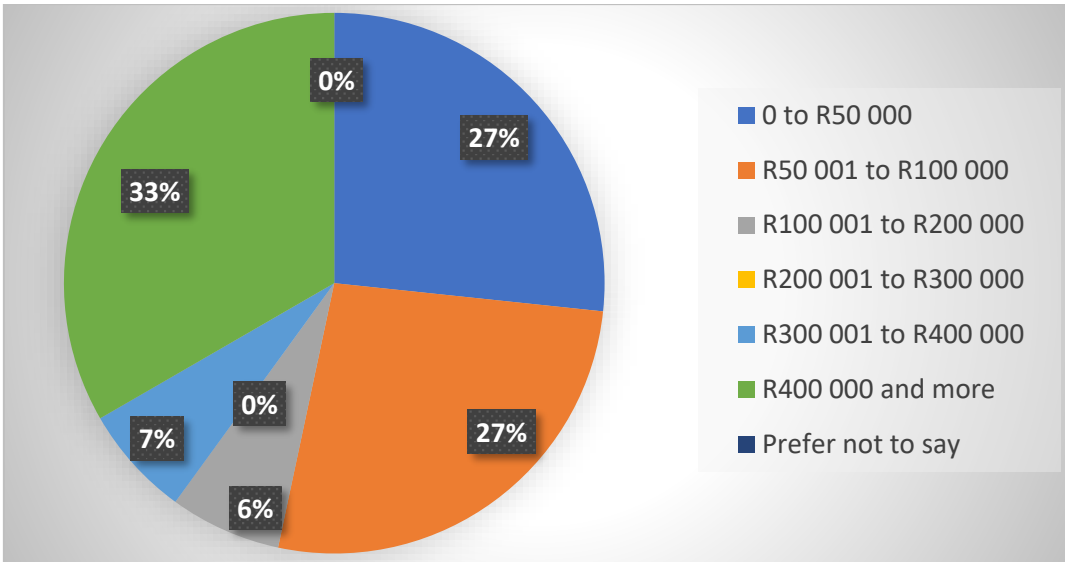


**Figure 4.3: Various respondent income brackets**

Figure 4.3 indicates 60 percent respondents with a gross salary of less than R15 000 per month. A combined 34 percent respondents have gross earnings above R15 001, and eight percent preferred not to disclose their earnings. This illustrates respondent earnings up to R5 000 are the most vulnerable to credit problems. With the unstable South African economy engulfed in high unemployment rates and expensive prices of basic necessities, these respondents end up in debt to meet their month-to-month expenses. The tax theory is best illustrated by examining respondent earnings, comparing these with their offered credit amount and interest rate.

#### **4.7.5 Borrower credit amount**

The respondents were asked to indicate their credit amount. The findings are illustrated in figure 4.4 and discussed below.

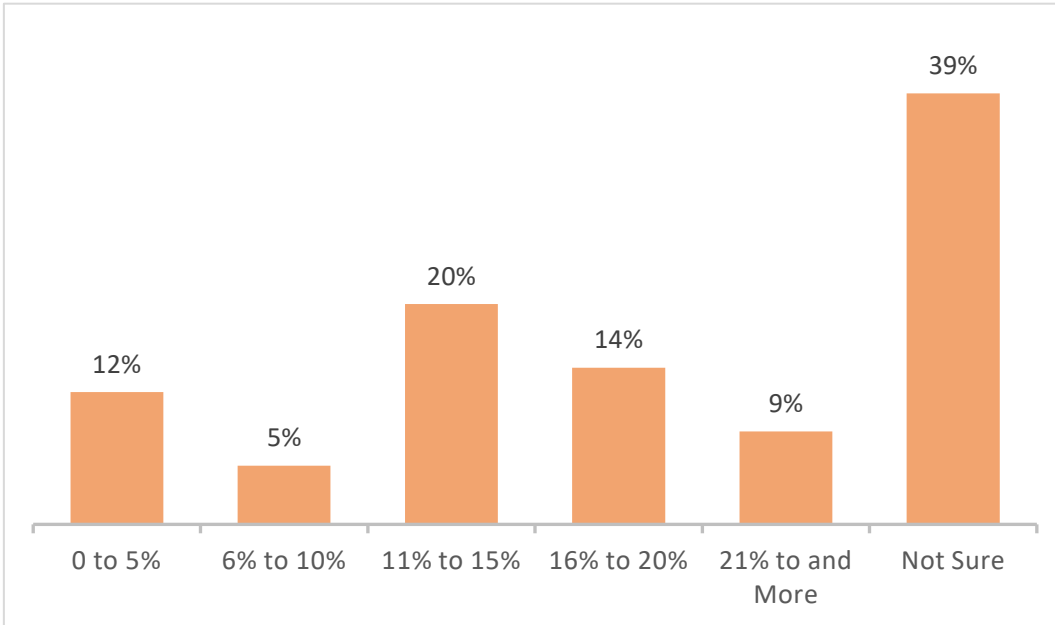


**Figure 4.4: Credit amounts of respondents**

Of the respondents polled, 52 percent have less than R50 000 in credit. A combined 48 percent have credit amounts greater than R50 001, with no respondent choosing not to disclose their credit amount. This data is relevant to determine the challenges and risks borrowers face, based on the credit amount of their credit accounts and testing the tax theory.

**4.7.6 Interest rate**

Respondents were required to describe the interest rate applicable to their credit accounts, with the following results noted.

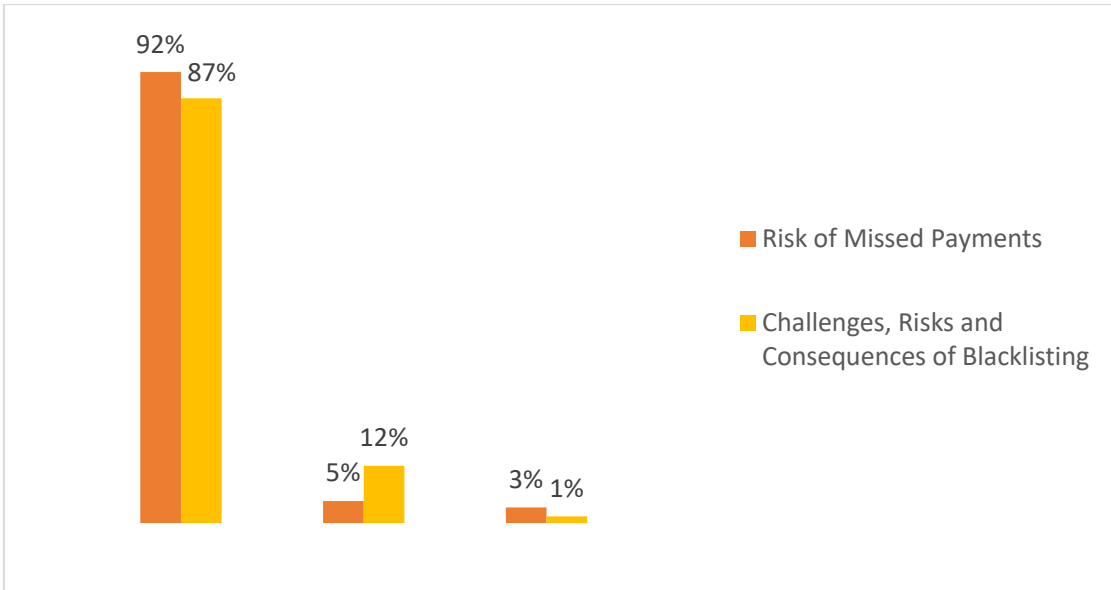


**Figure 4.5: Borrowers' credit interest rate**

As expressed in figure 4.5 above, 39 percent of respondents proclaimed they are unsure of interest rates on their credit. A further 20 percent indicated an interest rate between 11 and 15 percent, while 14 percent had an interest rate between 16 and 20 percent, and 12 percent indicated an interest rate of zero to five percent. Nine percent had an interest rate of 21 percent or higher, and only five percent had an interest rate of six to 10 percent.

#### **4.7.7 Missed payments risks, blacklisting challenges and consequences**

The following questions required respondents to indicate whether they are aware of the risks of missed credit repayments, as well as the challenges and consequences of being blacklisted. The following results, presented in figure 4.6, were noted.



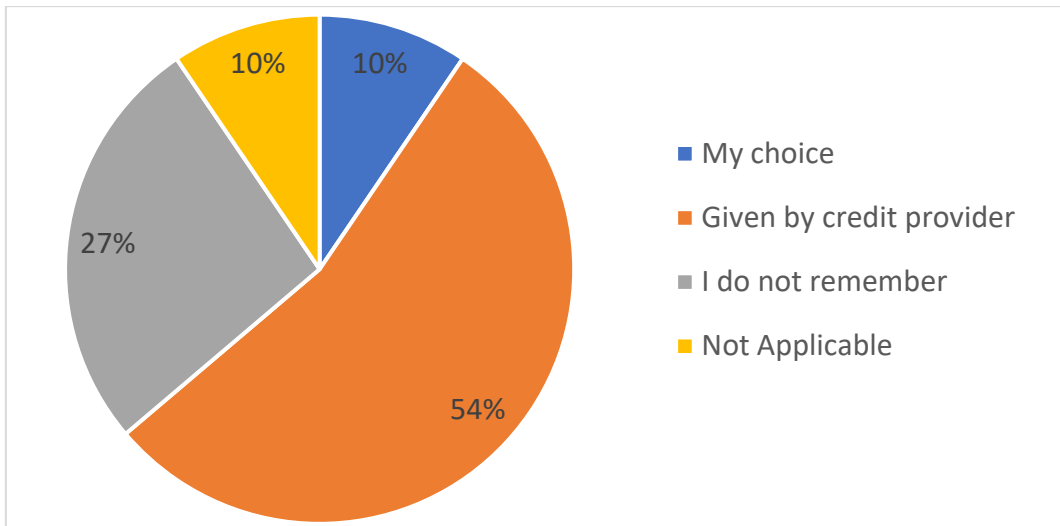
**Figure 4.6: Borrower knowledge regarding missed payment risks and blacklisting challenges and consequences**

As shown by figure 4.6, 92 percent respondents know the risks of missed payments and 87 percent are aware of the challenges and consequences that accompany being blacklisted.

Respondents showed great caution regarding missing credit repayments, indicated by 92 percent that agreed they know the risk of missing their credit obligations. This is as a result of knowing and understanding the challenges, risks and consequences that are associated with missed repayments (87 percent).

**4.7.8 Borrowers’ choice of credit protection, disability, and retrenchment cover**

This question relates to borrowers’ credit protection cover, disability and retrenchment covers. Respondents were required to indicate how they secured these covers for their credit accounts. Findings are discussed below.



**Figure 4.7: Borrowers' choice in credit protection, disability, and retrenchment cover**

As reflected in figure 4.7, more than 50 percent respondents stated credit protection, disability, and retrenchment cover are provided by their respective credit providers.

This illustrates the unfair credit practices, where providers usually include credit protection, disability, and retrenchment insurance as part of the initial credit agreement, without the borrower's knowledge. Borrowers may already have these policies in place, and these may not suit the lifestyle of some borrowers. For example, providing retrenchment coverage to a pensioner or disability coverage to a borrower already living with disability. Only 10 percent of borrowers have exercised their right to select their own provider for such coverage. This exemplifies borrowers are not well-informed of their rights under the NCA, and credit providers are capitalising on that.

#### **4.7.9 Borrower knowledge of the NCA**

The respondents were asked regarding their knowledge of the NCA and the extent to which they agreed or disagreed with the need to educate people on the NCA and its provisions. The following results were observed.

**Table 4.5: Respondent knowledge of the NCA and need for people to be educated regarding the NCA**

What is your knowledge of the NCA?			Do you see a need to educate people about the NCA?		
	Frequency	%		Frequency	%
Excellent	7	3%	Strongly Agree	100	45%
Good	29	13%	Agree	84	38%
Fair	72	32%	Neutral	32	14%
Poor	51	23%	Disagree	5	2%
No Knowledge	55	25%	Strongly Disagree	0	0%
Not Applicable	10	4%	Not Applicable	3	1%
Total	224	100%	Total	224	100%

From the above table, it is observed 16 percent respondents have “good” to “excellent knowledge” of the Act. However, a huge margin of approximately 80 percent respondents has “fair” to “no knowledge” of the NCA, this question did not apply to four percent of respondents. With regard to educating people on the NCA, a combined 83 percent “agreed” and “strongly agreed” to educating people, with 14 percent being neutral and two percent “disagreed”.

A combined figure of 80 percent respondents with "fair" to "no knowledge" of the NCA is worrying. With all respondents having made credit before or having active credit accounts, this figure shows a certain level of borrower carelessness, in that they do not know the legislation in case of mistreatment by credit providers.

A conclusion is drawn that borrower desperation for quick cash makes them agree to everything credit providers do or say, in order to obtain the credit they need. As a result, 83 percent respondents agreed further attempts should be made to educate customers regarding the NCA and its provisions.

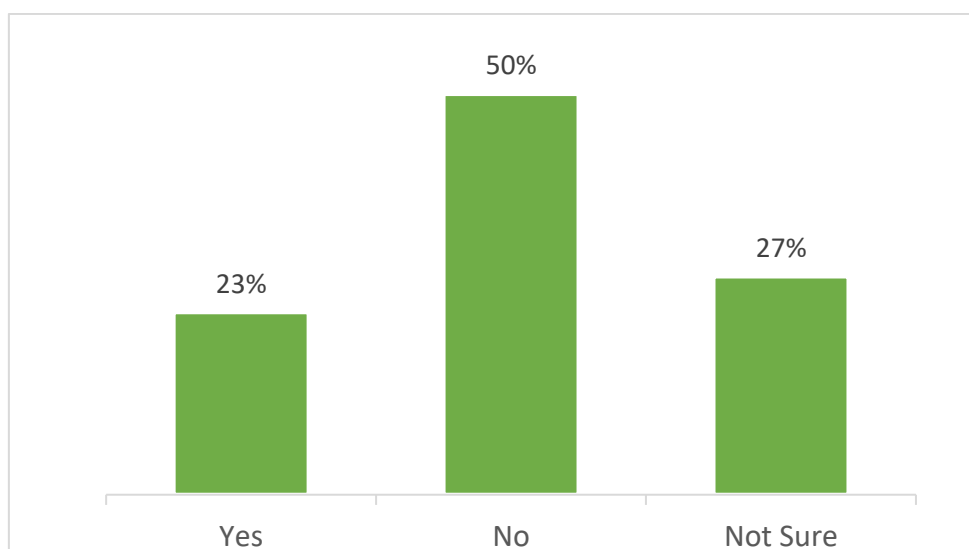
**Table 4.6 and Figure 4.8** below indicate credit provider efforts to tell borrowers taking credit of the NCA and its provisions, as well understanding the role of the Act.

**Table 4.6: Whether credit providers tell borrowers of the NCA**

Did your provider tell you about NCA?	Frequency	Cumulative Percentage
Yes	25	11%
No	128	58%
I do not remember	56	25%
Not applicable	12	5%
Total	221	100%

When issuing credit, credit providers do not tell borrowers of the NCA. This was witnessed by 58 percent respondents (table 4.6) who stated their credit providers did not let them know of such an act. As a result, roughly 50 percent respondents (Figure 4.8) do not understand the role of the NCA.

Sales personnel focus on making a sale, rather than ensuring customers clearly understand the product they are buying. Having said that, sales personnel working for credit providers do not take steps to explain neither the terms of their credit accounts or contracts to borrowers, nor relevant legislation under which the sale is made, or relevant bodies/offices to contact for complaints. As shown (Table 4.6) above, 58 percent respondents were not told of the NCA when taking credit, which is a serious breach by the credit provider. Additionally, this has a direct impact on borrower understanding of the NCA role. Figure 4.8 reflects half the respondents do not understand the NCA role.



**Figure 4.8: Borrowers' understanding of the NCA role**

## 4.8 Correlation

Bivariate correlation was also performed on the ordinal data, with correlation data exhibiting the patterns shown below. An inverse relationship is indicated by a negative value, while a direct proportional relationship is indicated by a positive value. All significant relationships are denoted by a “\*” or “\*\*\*”.

The key variables show remarkable intercorrelations. In contrast to negative values, which show an inverse relationship, positive values show a straight, proportionate relationship. For example, the correlation value between “Borrowers’ tax bracket” and “Credit amount” is 0.376. Proportionality is intimately tied to this. Respondents indicated the higher their tax bracket, the higher the credit amount they are afforded, and vice versa. Similarly, positive scores are noted for the following comparing variables.

### 4.8.1 Hypothesis

There is a significant intercorrelation between the various variables, such as borrowers tax bracket and credit amount; borrowers’ tax bracket, credit amount and credit interest rate; and type of credit and missing credit repayments. These factors contribute towards determining the amount credit providers can issue to such borrowers. All correlations are listed below, with the analysis of results indicating positive scores for the listed variables. As a result, these variables have a direct proportional relationship:

- “Borrowers Tax Bracket” and “Credit Amount” is 0.376. This demonstrates a significant correlation between the variables. Consequently, the more the borrower earns, the higher the amount of credit they qualify for.
- “Borrowers Tax Bracket”, “Credit Amount” and “Credit Interest Rate” is 0.595. This indicates a firm correlation between the variables. Accordingly, the higher the borrower's earnings, the higher the credit amount, and the lower the credit interest rate they receive. This also considers the borrower's credit score, credit history, and type of employment. Borrowers working for the government are considered to have been employed for the longest time, as there is a very low rate of retrenchment in government (Ingraham and Barrilleaux 1983) hence, they are given credit at an interest rate slightly lower than others.



- “Type of Credit” and “Missing Credit Repayments” is 0.266. Significant correlation is noted on borrowers having home loans or vehicle finances, as they indicated they have never missed credit repayments. This may be as a result of repossession clauses between borrowers and credit providers.

Considering the analysis of results and trends discussed above, it is evident the borrowers' tax bracket plays a significant role in determining the qualified credit amount for each borrower, considering other aspects such as credit score, credit history, and employment type. The results analysed above form part of sections of the primary data collection tool. As a result of limited time and resources, the researcher only analysed sections vital in testing the trends, correlation, and hypothesis.

#### **4.8.2 Tax theory**

The data collected best described the tax theory. When comparing Figure 4.3 (respondent income brackets) to figure 4.4 (respondent credit amounts), there is a direct proportionality of 0.376. Therefore, the higher the borrower's earnings, the higher the credit offer.

The findings are consistent with available secondary data. According to academic studies, the NCA's influence on credit industry segments and the probability consumers would benefit from its implementation both increased (Otto and Otto 2010). Borrowers are seen to be unfamiliar with the previous legislations that governed the credit market, but with the NCA coming into existence, they have basic knowledge of the Act, even though not clearly aware of its provisions.

Secondary data further showed issues of inconsistency and people were able to circumvent and misinterpreted the law. With the NCA, misinterpretations are reduced to the minimum, because the Act is bold and straightforward, irrespective of the fact its enforcement should be strengthened. Additionally, the data available suggested a below-average awareness of the NCA on the part of borrowers. This is witnessed by a combined 83 percent respondents who "agreed" or "strongly agreed" to the need to be educated further regarding the NCA and its provisions.

#### **4.9 Conclusion**

This chapter provided a detailed interpretation and discussion of the quantitative data. Reliability statistics, factor analysis, and cross-tabulation were discussed in detail. The chapter also tested the trends, patterns, and hypotheses. The next chapter outlines conclusions and recommendations in line with the study aims and objectives, as well as its limitations. Recommendations for future research are also presented.

## **CHAPTER FIVE**

### **CONCLUSION AND RECOMMENDATIONS**

#### **5.1 Introduction**

“Throughout the economic cycle, markets should operate efficiently and competitively, and the environment should be continuously regulated to prevent market failures” (Harper 1997: 7-25). In SA, a regulated credit market has been maintained since 2007, when the NCA came into effect. In this Act, all credit transactions are governed under one umbrella and covered under one law.

The aim of the study was to investigate the NCA's role in regulating unfair debt practices, borrower challenges, and risks in connection with unpaid debts, in the eThekweni Metropolitan area in the KwaZulu-Natal (KZN) province of SA. The key findings are, therefore, presented per objective in this chapter, as they relate to the research questions, highlighting the study results. The chapter will, furthermore, demonstrate the research problem and objectives were addressed. After providing practice recommendations, the chapter outlines policy implications and proposes future research directions.

#### **5.2 Objective one: To investigate unfair credit practices in the eThekweni Metropolitan area**

To achieve objective one, the researcher evaluated correlations between questions 14, 17 and 20 (Appendix C).

"Have you ever been handed over to debt collectors?" and "Credit Protection Plan selected by the borrower or given by the credit provider?" are both 0.879. This suggests a strong, positive association between the two variables. The interpretation is that most borrowers, who are or have been handed over to debt collectors, had no choice in choosing their own providers for credit protection, disability, and retrenchment cover, however, credit providers issued these covers to borrowers along with credit.

"Have you ever been blacklisted?" and "Credit Protection Plan selected by the borrower or given by the credit provider" is 0.545. A positive correlation exists

between these variables, as it is concluded most blacklisted respondents had their credit covered by their respective credit providers.

“Have you been handed over to debt collectors?” and “Have you been blacklisted?” is 0.641. A firm correlation was found between these two variables. It is observed respondents who were handed over to debt collectors ended up being blacklisted.

From the above analysis, it is evident the NCA is not strict enough to compel providers to allow borrowers to exercise their rights, as far as choosing providers of credit protection coverage is concerned. Borrowers end up on the books of debt collectors, without fully exercising their rights to choose when applying for credit. In most cases, providers sell these protection covers at inflated prices, compared to those available on the market and even provide cover the borrowers can never claim.

The first objective was, therefore, achieved.

### **5.3 Objective two: To investigate challenges and risks faced by borrowers in connection with unpaid debts**

To achieve the second research objective, literature was reviewed on the challenges and risks faced by borrowers due to unpaid debts. Comparing these factors to borrowers' challenges and risks aimed to gain a better understanding of the factors contributing to unfair credit practices. The objective was also achieved by analysing responses regarding respondent perceptions of the risks and consequences when not making or missing credit repayments. According to the findings, more than 85 percent respondents are aware of the challenges, risks, and consequences of missing credit repayments. The following conclusions were reached after considering the aforementioned results.

- Missing credit repayments downgraded borrowers' credit scores (Experian 2020). Furthermore, applying for and opening multiple credit accounts during a short period of time is detrimental to the borrower's credit score as each application may lead to hard inquiries.
- Borrowers being handed over to debt collectors because of not making or missing credit repayments have serious repercussions should they wish to make a new credit application in the future. In addition, respondents vowed to have ensured that no administration orders are executed against their names as that

will affect their credit worthiness leading into challenges of being approved credit or difficulties accessing it.

- Should borrowers' credit applications be approved, there is less freedom of choice regarding the choice of credit protection, disability, and retrenchment coverage. Providers often simply provide such cover along with approving an application, and borrowers are not adequately informed.
- As the rate of fraud and identity theft is on the rise, properly checking and verifying documents submitted for credit applications will contribute positively towards identifying fraudsters and stolen identities used in applying for credit.
- Compliance with credit legislation by providers in conducting affordability, and credit risk assessments, as well as borrowers honouring their credit obligations, will result in the prevention of such challenges and risks, as well as a reduction in the level of reckless lending and over indebtedness.

Based on the review of literature and the findings discussed above, the second objective was achieved.

#### **5.4 Objective three: To examine the NCA role and strategies in addressing unfair credit practices, borrower challenges and risks**

Goodwin-Groen and Kelly-Louw (2006) noted similar credit laws are similarly crafted in other developed countries, with their primary objective to eliminate undesirable credit practices, prevent over-indebtedness, and reduce repayment defaults. Academic studies revealed the NCA impacted different credit industry segments and the possibility that consumers would also gain from its implementation both increased. As part of NCA requirements, lenders must conduct proper affordability assessments and ensure prospective credit consumers are not over-indebted (Scott 2008: 16). This means credit providers must evaluate credit consumer credit worthiness prior to granting credit.

Section 89 and 90 of the NCA prohibit unlawful credit agreements and unlawful provisions of credit agreements. This study revealed more than 64 percent respondents have credit protection, disability, and retrenchment insurance provided by their respective credit providers. In most cases, these covers are presented at rates above inflation.

To achieve this objective, the researcher asked respondents to state how they secured coverage of such events, whether they are or have been blacklisted, knew the challenges and risks of blacklisting, and had been denied credit before. The responses showed a positive correlation between these questions; hence, the researcher concluded that unfair credit practices by providers make it difficult for borrowers to access credit. These practices include, but are not limited to, not considering borrowers' household income prior to denying credit, inflating credit protection cover, and providing retrenchment and disability covers to unemployed or retired borrowers. Therefore, to ensure equal access to credit for all income groups, the government must establish a formal, accessible credit market. This will contribute to the improvement of consumer rights.

Based on the literature reviewed and findings discussed, the third objective was also achieved.

#### **5.5 Objective four: To raise borrower awareness of NCA provisions**

The fourth research objective was to raise awareness regarding NCA provisions. This would be accomplished by determining whether the NCA promulgation has created any new or improved credit consumer rights and determining whether borrowers are aware of these rights. The researcher assessed borrowers' knowledge of the NCA, examined whether credit providers share adequate information regarding consumer rights and enforce these rights, and whether borrowers have adequate knowledge of their rights when taking out credit.

The following results were observed: 47 percent acknowledged not having good knowledge of their consumer rights as stipulated in the NCA. These rights include the ability to seek credit, the right to know why an application was rejected, the right to information in plain English, and the access to documentation, as well as the right to secrecy. Pillay (2009) concluded the NCA was created to safeguard consumers and solve issues with consumer credit (2009: 2). These findings show those familiar with the NCA understand its purpose and goals, in terms of consumer protection.

Rossouw (2008: 2) is of the opinion the Act offers consumers protection against fraudulent credit providers and discourages financial institutions from unfair practices. Furthermore, it is noted in Sec 62 (1) of the NCA, borrowers have a right to reasons for credit being refused, Section 63 (1) right to information in official

language, Sec 65 (1) right to receive documents and Sec 68 (1), right to confidential treatment. The study shows there are no stricter rules that compel providers to always abide by these rules.

More than half (59 percent) the respondents also stated credit providers do not provide appropriate explanations for all elements of their credit. Borrowers do not benefit from the new enhanced rights created by the NCA and implemented by credit providers, in this case. Nonetheless, more than 45 percent proposed the public be conscientised regarding the NCA.

Due to the enactment of the NCA, the below provisions are available to borrowers who feel mistreated by credit providers, notice non-compliance or are doubtful of the credit provider's legitimacy:

- The NCR identifies factors that may jeopardise consumer protection, competitiveness, and access to credit, while it also conducts research on the credit market, monitoring access to credit and credit costs.
- The NCT adjudicates on NCA applications filed by consumers, credit providers, credit bureaus, debt counsellors, and the National Consumer Register. It is an independent organisation that promotes equity and justice in the consumer and credit sectors.
- The Credit Ombudsman deals with consumer and business complaints. When a customer has a dispute with a credit provider, credit bureau information may be requested by this body.
- The CBA goal is to ensure the confidentiality, accuracy, and relevance of credit data received, as well as the proper use of such data.
- The BASA advocates for its interests with regulators, legislators, and stakeholders to make banking more sustainable, profitable, and capable of contributing to the country's economic and social development.
- The Competition Commission monitors and assesses anti-competitive business practices, abuse of dominant positions, and mergers with the goal of promoting equity and efficiency in the South African economy.

Having analysed the responses and noted all these available provisions, the fourth objective has been achieved as well.

## **5.6 Tax Theory**

To test the tax theory, the researcher examined respondents' earnings and compared these to the amount of credit they received, considering interest rates and payment terms. It was determined that borrowers in the lower tax bracket receive lower credit amounts with higher interest rates than their counterparts in the higher tax bracket, who enjoy higher credit amounts with lower interest rates and longer repayment terms. A correlation value of 0.376 was observed between the variables, indicating direct proportionality. As a result, the tax theory was successfully applied in this study.

## **5.7 Recommendations from the study**

Having discussed the findings and highlighting the subsequent conclusions drawn, the following recommendations can be made to borrowers, credit market stakeholders and government or policy makers:

- It is important for credit consumers to be well informed prior to signing credit agreements, and to make timely payments, as this will establish a good credit record that will allow them more access to credit in the future. By doing this, consumer rights will be developed and improved, resulting in long-term benefits for consumers. Furthermore, this will eliminate the opportunity of being subjected to unfair credit practices, should a borrower wish to access a credit facility at some point.
- Credit providers should ensure key information, such as interest rate, credit protection cover, disability, and retrenchment coverage, is properly disclosed to borrowers when granting credit. Lack of disclosure of key information could result in a challenge and the risk of misinformation among borrowers, leading to default on repayments or blacklisting. Standard disclosure of key information is not sufficient to ensure people can convert this into useful knowledge, as basic literacy and numeracy abilities are required and should not be assumed.
- It is important for any new consumer credit policy to address consumer education, both for adults and students. Consumer credit is becoming increasingly complex and understanding and participation are both dependent on a certain level of knowledge. For the President's vision of an integrated economy to be realised, all citizens must be equally involved.



- Based on the findings, the regulator should not make it easier to obtain credit but adhere to a specific set of principles outlined in the legislation, ensuring all borrowers are adequately informed on the NCA and its provisions.
- It is necessary to treat credit insurance equally to other finance charges, in order to further improve consistency and transparency. Due to the current legislation's broad scope, credit insurance has become a significant area of growth for credit providers and insurers. Although uniform charges are not intended to regulate the insurance market, it does aim to regulate the relationship between credit and insurance products, particularly when consumers are likely to be oversold or over-insured to their detriment, and where their choice of insurance products will be limited.
- Borrowers' lack of knowledge concerning interest rates on their credit accounts was another major point of controversy. It is also evident consumers do not fully understand the gravity of their rights under the NCA legislation. More discerning and informed customers will improve competitiveness in the market and ensure adequate quality.
- Credit providers have an advantage over credit seekers due to the imbalance of power between the two. In contrast, consumers would be able to demand better service from businesses should they have higher skill levels and are aware of their rights regarding credit transactions.
- Additionally, it would be useful to compel the market to contribute to consumer education programmes, either through the Banking Charter or through other industry contributions. As a result, a mechanism that allows for joint contributions from government and industry, as well as joint determination and development of education campaigns, should be developed.
- It is crucial to explore further how the internet, taxi services, entertainment venues, and social media platforms can be used to raise awareness of consumer rights under the NCA. Sewnunan (2014: 92) revealed online communication channels reach approximately 45 percent of SA's population in one week. Therefore, it is a platform worth exploring.
- The DTI must constantly monitor market trends and developments to adapt the NCA to new developments and keep the credit industry regulated. The changes

must help achieve the objectives of preventing reckless lending and significantly lowering reckless consumer credit and over-indebtedness.

## **5.8 Recommendations for Future Research**

The following are suggested as future research activities.

A comparative study of different metropolitan districts in KZN to assess the debt practices, challenges and risks faced by borrowers when accessing credit or in connection with unpaid debts.

The DTI should conduct a review to determine whether the NCA is adequate for dealing with all unfair credit practices, challenges, and risks borrowers face. According to the findings, credit consumers face a variety of unfair practices and challenges when applying for credit. The conclusions will clarify how the NCA works and enlighten credit seekers how effective the Act is. Furthermore, the findings could be used by the government to revise the NCA and concentrate on the areas of the credit business that need more attention.

Government and credit regulatory bodies should conduct research to determine whether efforts to raise awareness are yielding positive results. Findings show some consumers have heard of the NCA but are unaware of the rights afforded by this Act. This study will help in restructuring awareness channels and platforms to teach consumers regarding the NCA, its provisions and remedies available, should credit providers mistreat them.

## **5.9 Policy Implications**

This research study shows borrower inability to meet monthly expenses, exposes them to taking out credit to finance the shortfalls. In most cases, they do so without paying much attention to crucial details in their credit agreements. Non-compliance with relevant credit legislation is much greater within the credit industry than understood. There is also a need to strengthen the rules of compliance when applying for and issuing credit. This will ensure all relevant regulations are being followed and the credit market is fair for all and competitive. Furthermore, it is noticeable low-income borrowers have too many credit accounts with high interest rates when compared to middle and high-income borrowers. To address the issue of educating consumers, social platforms are now a method of communication that

reaches the population quicker, as people spend much time on the internet or socialising.

The South African credit market is plagued by noncompliance on both sides, borrowers, and credit providers. Furthermore, the government and relevant stakeholders are challenged by time and resources to facilitate the implementation of stricter rules to ensure proper compliance and accountability. Therefore, borrowers can choose to be educated regarding the credit market and its regulations, in order to better understand the functioning of the market.

The researcher argued, despite the challenges within the market that have all been discussed, credit providers' alignment with best practices and improved borrower knowledge of the NCA will contribute positively to the alleviation of such challenges. In addition, stricter legislation with regard to the application and granting of credit will make borrowers very mindful of their finances, thus reducing reckless exposure to taking credit. As a result, unfair credit practices will be reduced to a minimum.

#### **5.10 Concluding Remarks**

The study demonstrated the existence of unfair credit practices in SA's credit market and emphasised the necessity of taking steps to reduce the risks and challenges borrowers encounter when seeking credit. It was further demonstrated that greater credit awareness may discourage unfair credit practices, risks, and challenges, as well as encourage more stringent credit-granting guidelines. Existing measures and stakeholders to deal with unfair credit practices and borrower challenges were also highlighted. The value of the current study is that it shows the relevance of previous studies, as discussed in the literature review to the current research.

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## APPENDIX A: LETTER OF INFORMATION



### LETTER OF INFORMATION

Greetings

My name is Lungelo Percival Zulu. I am conducting a research study for my master's degree in management sciences specializing in Business Law at the Durban University of Technology. You are hereby requested to participate in the research study as part of my studies for the above-mentioned qualification.

**What is Research:** Research is a creative and systematic effort to expand the knowledge that exists. It entails the unbiased collection, organisation, and analysis of data to improve understanding of a topic or issue.

**Title of the Research Study:** Unfair credit practices, borrower challenges and risks, and the role of the National Credit Act in the eThekweni Metropolitan Area

**Principal Researcher:** Lungelo Percival Zulu

**Research Supervisor/s:** Dr Norah Hashim Msuya (LLB, LLM, PhD in Law)

**Brief Introduction and Purpose of the Study:** The purpose of the study is to investigate unfair credit practices, borrower challenges and risks in the eThekweni metropolitan area, and the role played the NCA. Given the importance of the NCA and the absence of support consumers received from the previous Usury Act No. 73 of 1968 and the Credit Agreements Act No. 75 of 1980, this research seeks to investigate unfair debt practices, challenges and risks experienced by borrowers in connection with unpaid debts; the role and strategies of the NCA in addressing such challenges and risks and raise awareness about provisions of the NCA. This researcher believes that the research aim will be met through a thorough examination of the following objectives:

- To investigate unfair credit practices in the eThekweni Metropolitan area.
- To investigate challenges and risks faced by borrowers in connection with unpaid debts.
- To examine the role and strategies of the NCA in addressing unfair credit practices, borrower challenges and risks.
- To raise awareness to borrowers about provisions of the NCA.

**Outline of the Procedures:** Questionnaires will be sent to you by means of hard copy or Google Forms, whichever is convenient to you, and will take 10 to 15 minutes to



complete. You are required to answer all questions with honesty and truthfulness. 208 questionnaires will be issued to respondents who reside or work within the eThekweni Metropolitan area.

**Risks or Discomforts to the Participant:** There are no risks to both the researcher and you as a participant.

**Explain to the participant the reasons he/she may be withdraw from the Study:** Your participation is voluntary, and you may withdraw at any time with no consequences.

**Benefits:** You will not receive any benefits or be compensated for participating in this study.

**Remuneration:** You will not be remunerated for participating in this study.

**Costs of the Study:** R 10 000.00 but you, as a participant, is not liable for any of these costs.

**Confidentiality:** The identity will not be required on the questionnaires. Data collected will be stored for a period of five years in a secured and locked cabinet to which only the researcher and the supervisor will have access. After this period, questionnaires will be shredded to maintain maximum confidentiality. A soft copy of the questionnaire will be kept on a password-secured external hard drive and only the researcher and supervisor will have access to it. It will be destroyed after five years, and the information respondents provide will only be used for research purpose.

**Results:** Findings from this research will provide the National Credit Regulator and credit market stakeholders with imperative information that could address issues of unfair credit practices, challenges, and risks consumers encounter. First-time credit consumers will gain knowledge to be mindful of unfair credit practices executed by providers. Furthermore, it will educate consumers about affordability and credit risk assessment procedures that should be complied with before being granted loans and help government authorities and policymakers make informed decisions within the credit market. Findings will be conveyed by means of a dissertation that will be available at the repository at the Durban University of Technology.

**Research-related Injury:** Not applicable

**Storage of all electronic and hard copies including tape recordings:** Questionnaire data collected will be stored for a period of five years in a secured and locked cabinet to which only the researcher and the supervisor will have access. After this period, questionnaires will be shredded. A soft copy of the questionnaire will be kept on a password-secured external hard drive and only the researcher and supervisor will have access to it. It will be destroyed after five years, and the information respondents provide will only be used for research purposes.

**Persons to contact in the Event of Any Problems or Queries**

<b>Researcher</b>	<b>Supervisor</b>
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Complaints can be reported to the Acting Director: Research and Postgraduate Support on [researchdirector@dut.ac.za](mailto:researchdirector@dut.ac.za)

## APPENDIX B: CONSENT FORM



### CONSENT

**Full Title of the Study:** Unfair credit practices, borrower challenges and risks, and the role of the National Credit Act in the eThekweni Metropolitan Area.

**Names of Researcher/s:** Lungelo Percival Zulu

#### **Statement of Agreement to Participate in the Research Study:**

- I hereby confirm that I have been informed by the researcher..... (name of researcher), about the nature, conduct, benefits and risks of this study - Research Ethics Clearance Number: **IREC 146/22**
- I have also received, read and understood the above written information (Participant Letter of Information) regarding the study.
- I am aware that the results of the study, including personal details regarding my sex, age, date of birth, initials and diagnosis will be anonymously processed into a study report.
- In view of the requirements of research, I agree that the data collected during this study can be processed in a computerised system by the researcher.
- I may, at any stage, without prejudice, withdraw my consent and participation in the study.
- I have had sufficient opportunity to ask questions and (of my own free will) declare myself prepared to participate in the study.
- I understand that significant new findings developed during the course of this research which may relate to my participation will be made available to me.

.....

.....

.....

**Full Name of  
Participant**

**Date**

**Signature/  
Thumbprint**

I, Lungelo P. Zulu herewith confirm that the above participant has been fully informed about the nature, conduct and risks of the above study.

.....

**Full Name of Researcher**

.....

**Date**

.....

**Signature**

## APPENDIX C: QUESTIONNAIRE

**Unfair credit practices, borrower challenges and risks, and the role of the National Credit Act in the Durban Metropolitan area.**

Questionnaire also available online at:  
[https://docs.google.com/forms/d/e/1FAIpQLSeqVXEyMv0EiP0zcfyMtifmmEMt2fN553X1QahYN1ZSPj-esw/viewform?usp=sf\\_link](https://docs.google.com/forms/d/e/1FAIpQLSeqVXEyMv0EiP0zcfyMtifmmEMt2fN553X1QahYN1ZSPj-esw/viewform?usp=sf_link)

### Instructions:

- Please tick the most appropriate box.

1. Please select your gender.

<b>Male</b>	<b>Female</b>	<b>Prefer</b>
		<b>not</b>
		<b>to</b>
		<b>say</b>

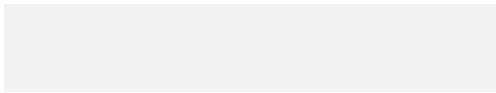
2. Please select your race.

<b>African</b>	<b>Coloured</b>	<b>Indian</b>	<b>White</b>	<b>Other</b>	<b>Prefer</b>
					<b>not</b>
					<b>to</b>
					<b>say</b>

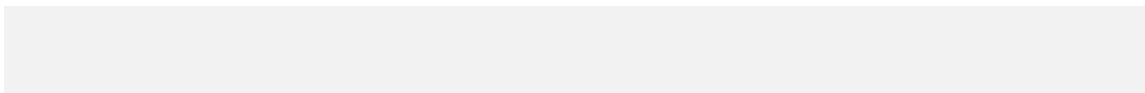
3. Please select your age

18 – 31 – 41 – 51 – 61  
 30 40 50 60 ≥



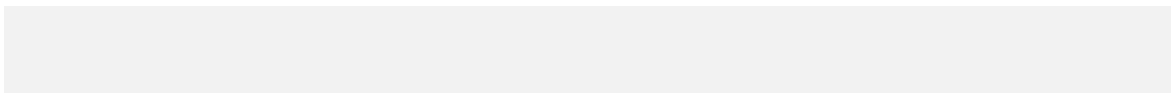
4. Please select your level of education.

Never went to school  
 Primary School - Matric  
 Higher Certificate  
 Diploma  
 Degree / Honour's Degree / Doctorate



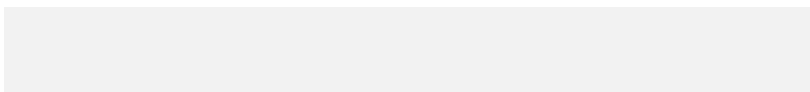
5. Please indicate your type of employment.

Unemployed  
 Self-employed  
 Contract employment  
 Permanent  
 Retired / Retrenched  
 Other



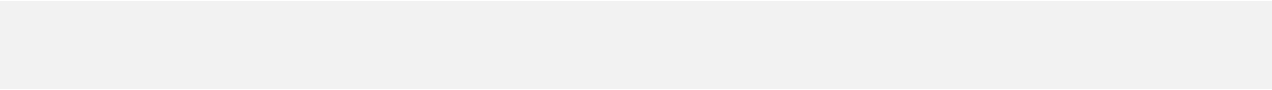
6. Please select your income bracket.

0 – R5 000  
 R5 001 – R10 000  
 R10 001 – R15 000  
 R15 001 – R20 000  
 R20 001 – R25 000  
 More than R25 000



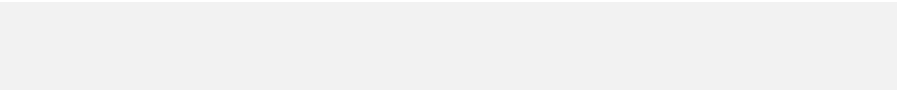
7. Please select your type of credit. *(You may select more than one)*

Home Loan / Vehicle finance  
 Clothing / Cell phone contract  
 Personal Loans  
 Student Loans  
 Business Loans  
 Loan shark / Mashonisa  
 Other



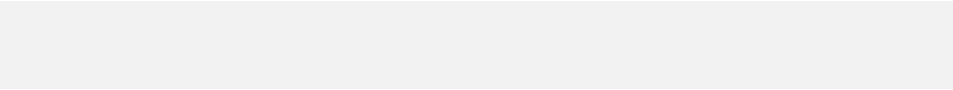
8. Please select your credit amount.

<b>0</b>	<b>-</b>	<b>R50 001</b>	<b>R100 001</b>	<b>R200 001</b>	<b>R300</b>	<b>More</b>
<b>R50</b>	<b>-</b>	<b>-</b>	<b>R</b>	<b>-</b>	<b>001</b>	<b>than</b>
<b>000</b>	<b>R100</b>	<b>200</b>	<b>R300</b>	<b>-</b>	<b>R400</b>	
	<b>000</b>	<b>000</b>	<b>000</b>	<b>R400</b>	<b>000</b>	
				<b>000</b>		



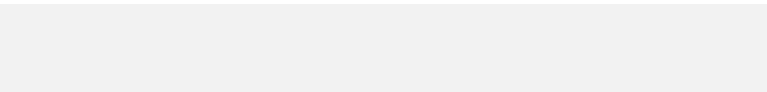
9. Please select the term of your credit.

<b>0</b>	<b>-</b>	<b>12</b>	<b>1</b>	<b>-</b>	<b>6</b>	<b>-</b>	<b>10</b>	<b>11</b>	<b>-</b>	<b>15</b>	<b>16</b>	<b>-</b>	<b>20</b>	<b>21</b>
	<b>months</b>		<b>5years</b>		<b>years</b>		<b>years</b>		<b>years</b>		<b>years</b>		<b>years</b>	<b>and</b>
														<b>more</b>



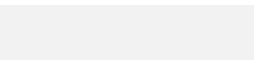
10. What is your interest rate on your credit or account?

<b>0</b>	<b>-</b>	<b>6</b>	<b>-</b>	<b>11</b>	<b>-</b>	<b>16</b>	<b>-</b>	<b>21%</b>	<b>Not</b>
<b>5</b>	<b>10%</b>	<b>15%</b>	<b>20%</b>	<b>and</b>	<b>sure</b>				
<b>%</b>				<b>more</b>					



11. Are your monthly credit obligations above your monthly earnings?

<b>Yes</b>	<b>No</b>	<b>Not</b>
		<b>sure</b>



12. Please select how many times have you missed your credit repayments.

**Never**      **1** – **3** **4** – **6** **7** **and**  
**missed**      **times**      **times**      **more**  
**payments**

13. Are you aware of the risks of missed payments?

**Yes** **No** **Not**  
**sure**

14. Were you ever handed over to debt-collectors?

**Yes** **No** **Not**  
**sure**

15. Did your credit provider notify you before handing you over?

**Yes** **No** **Not**  
**sure**

16. Is there any administration order or pending administration order in your name?

**Yes** **No** **Not**  
**sure**

17. Are you or have you ever been blacklisted?



**Yes No Not  
sure**

18. Do you know the challenges, risk, or consequences of being backlisted?

**Yes No Not  
sure**

19. Do you have credit protection, disability or retrenchment cover on your loan or credit?

**Yes No Not  
sure**

20. Is your credit protection, disability or retrenchment cover of **your choice or it was given** to you by your credit provider?

**My Given by Not  
Choice Credit Applicable  
Provide**

21. Are you aware of any credit legislation?

**Yes No Not  
Applicable**

22. Please select the credit legislation you know.

**Usury Act No. 73 of 1968**      **Credit Agreements and Exemption Notices**      **National Credit Act**      **Consumer Protection Act**      **Not Applicable**

[Redacted]

23. Are you aware of customer protection afforded by your selected legislation?  
**Yes No Not Applicable**

[Redacted]

24. What is your knowledge of the National Credit Act?  
**Excellent Good Fair Poor No Knowledge**

[Redacted]

25. Where did you learn about the National Credit Act?  
**Newspaper School or Television Campaigns or Books Other University Roadshows**

[Redacted]

26. Do you know the role of the National Credit Act?  
**Yes No Not sure**

[Redacted]

27. When taking credit, did your credit provider tell you about the **National Credit Act and its provisions?**

**Yes No I don't  
remember**

28. Are you aware of any customer rights under the National Credit Act?

**Yes No Not  
Applicable**

29. Do you see a need to **educate people about** the National Credit Act?

**Strongly Agree Neutral Disagree Strongly  
Agree Disagree**

## APPENDIX D: EDITOR CERTIFICATE

**Helen Richter**

Advanced Editing & Proofreading

[editassist2023@gmail.com](mailto:editassist2023@gmail.com)

+27 729227221

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7 February 2024

To whom it may concern

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### CERTIFICATE OF EDITING & AUTHENTICATION

---

I have proofread and language edited the examined Master's dissertation titled:

**“Unfair Credit Practices, Borrower Challenges and Risks, and the role of the  
National Credit Act in the eThekweni Metropolitan Area”**

By

**Lungelo Percival Zulu**

To the best of my knowledge, the work is free of spelling, grammar, structural and stylistic errors and the contents are certified as the author's own work.

With thanks.

---

H. S. Richter

---

# APPENDIX E: RESEARCH ETHICS CERTIFICATE



**TRREE**

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## Certificado Certificate

Promouvoir les plus hauts standards éthiques dans la protection des participants à la recherche biomédicale  
Promoting the highest ethical standards in the protection of biomedical research participants

**Certificat de formation - Training Certificate**

Ce document atteste que - this document certifies that

### Lungelo Zulu

a complété avec succès - has successfully completed

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du programme de formation TRREE en évaluation éthique de la recherche  
of the TRREE training programme in research ethics evaluation

Release Date: 2021/08/11  
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Professeur Dominique Sprumont  
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[REV - 20170310]

## APPENDIX F: FULL RESEARCH APPROVAL LETTER



17 October 2022

Mr L P Zulu  
149 Copperfield Crescent  
Earlsfield  
Newlands West  
4037

Dear Mr Zulu

**Unfair credit practices, borrower challenges and risks, and the role of the National Credit Act in the eThekweni Metropolitan Area**  
**Ethical Clearance number IREC 146/22**

The DUT-Institutional Research Ethics Committee acknowledges receipt of your final data collection tool for review.

We are pleased to inform you that the data collection tool has been approved. Kindly ensure that participants used for the pilot study are not part of the main study.

Please note that **FULL APPROVAL** is granted to your research proposal. You may proceed with data collection.

Any adverse events [serious or minor] which occur in connection with this study and/or which may alter its ethical consideration must be reported to the DUT-IREC according to the DUT-IREC Standard Operating Procedures (SOP's).

Please note that any deviations from the approved proposal require the approval of the DUT-IREC as outlined in the DUT-IREC SOP's.

Yours Sincerely

\_\_\_\_\_  
Prof J K Adam  
Chairperson: DUT-IREC

## APPENDIX G: TURN IT IN REPORT

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PROF. K. REDDY

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