Disclosure as an Indirect Measure Aimed at Preventing Over-indebtedness

PHILIP N STOOP*
University of South Africa

1. Introduction and Background

Some of the most important objectives of consumer credit legislation identified by the South African Law Commission were that it must address the consumer’s unequal bargaining position, curb the exercise of remedies by credit providers, educate consumers, and provide consumers with relevant information.¹ Given the considerable imbalance of power between credit providers and consumers, low education levels, poorly informed consumers, weak disclosure and deceptive marketing practices, many South African consumers have concluded unaffordable credit contracts. For these reasons, Parliament passed the comprehensive National Credit Act.² The purposes of the Act are to promote and advance the social and economic welfare of South Africans; encourage a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit market and industry; protect consumers by addressing and preventing over-indebtedness; and provide mechanisms for preventing and resolving over-indebtedness.³ A related purpose of the Act is to help consumers to make informed choices regarding credit and to provide consumer education. To align new consumer credit measures with these purposes of consumer protection, the Act introduced regulatory measures that aim, directly and indirectly, at resolving and preventing the over-indebtedness of South African consumers.⁴

In 2001, INSOL International recommended that governments, quasi-governmental or private organisations globally should improve information and advice on the risks attached to consumer credit.⁵ This recommendation was based on the principle that prevention is better than cure; in other words, that the solution for over-indebtedness and over-spending is to be found in preventing over-indebtedness rather than in direct measures for debt relief.⁶ The South African Law Commission identified consumer education and the supply of information as the most important objectives of consumer credit legislation in order to address the consumer’s unequal bargaining position, to curb malpractices and the exercise of remedies by credit providers, and to

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² 34 of 2005.
³ Section 3 of the National Credit Act.
protect the consumer community.\textsuperscript{7} In its \textit{Policy Framework}, the DTI set out measures aimed at helping consumers to make informed choices.\textsuperscript{8} One such measure is the disclosure of information (disclosure refers to disclosure in a wide sense and not only pre-contract disclosure). Before the Act came into force, very few consumers were aware of the total cost, the fees, charges, add-ons and so forth, of credit.

Under the new policy on consumer credit, standardised disclosure of information and costs, in contracts and sales and marketing material, is required. A supplementary aim of disclosure is to help consumers to make informed choices and to shop among different credit providers.\textsuperscript{9} Three levels of disclosure are identified: (1) seeking business; (2) entering into a contract; and (3) post-contract disclosure. The first stage of disclosure entails seeking business in the form of credit advertising and issuing credit quotations. The second stage is where the parties enter into a contract and entails the formalities and disclosure in the contract document. The third stage of disclosure entails post-contract disclosure, where copies of the instrument of debt, periodic statements and statements on request are sent to the consumer. The Act made all three stages of disclosure compulsory. When a lack of information is addressed, consumers’ ignorance will be relieved and, at the same time, with more information available to them, they will be protected against taking up credit without proper thought. Disclosure, as indirect measure, has the capability of preventing over-indebtedness and overspending, provided that it addresses a lack of information.

\textbf{2. The Value of Disclosure as an Indirect Measure aimed at Preventing Over-Indebtedness}

People who act with complete information usually choose outcomes that maximise their benefits and minimises costs.\textsuperscript{10} Enhanced disclosure requirements can therefore be indirectly used to address the problem of over-indebtedness. Improved disclosure, as required by credit legislation, provides more information and improves a consumer’s decision-making, and directly prevents the use of so-called ‘hidden fees’. Full disclosure can also stimulate consumers to think about the potential risks of credit. On its own, disclosure is unlikely to prevent over-indebtedness, especially in South Africa and other developing countries where many consumers are illiterate and financially unsophisticated. Disclosure works the best where consumers are


\textsuperscript{9} Contra Sherrill Shaffer ‘The Competitive Impact of Disclosure Requirements in the Credit Card Industry’ (1999) 15 \textit{Journal of Regulatory Economics} 183-198 where the author questions the efficacy of disclosure requirement in the USA and comes to the conclusion, based on empirical studies, that it does not increase the degree of competition in the credit card industry.

literate and able to understand information. In these countries consumer education is therefore of equal importance. Furthermore, if access to credit is restricted the effect of disclosure on credit-decisions can further increase, especially where consumer’s credit purchase decisions are merely based on psychological factors.  

In empirical research conducted in the United States of America, the University of Chicago studied whether and what information can be disclosed to payday loan borrowers to lower their use of high-cost debt via a field experiment at a national chain of payday lenders. The results showed, however, that the power of information disclosure, or at least the specific forms of information disclosure experimented with in that study, may be limited for some groups of payday borrowers (especially larger loan borrowers). This suggests that information disclosure might be a more effective policy tool if it is also combined with well thought-out regulatory limits on credit and how much credit a consumer can afford. Overall, the results indicated that consumer information regulations might be an effective policy tool when it comes to regulating payday borrowing, and possibly other financial and non-financial products.

The primary objective of cost of credit disclosure globally is to make it easier for consumers to compare the cost of credit from different sources of credit and to enable a consumer that answer the question, ‘What does a loan cost me?’. Being aware of the total cost and one’s credit position can indirectly prevent consumers against from taking up credit that they can’t afford and becoming over-indebted. In general, full disclosure is probably more likely to benefit high income consumers, because lower-income and illiterate consumers are prone to succumb to aggressive marketing. Marketing of credit should therefore also be regulated by, as indicated above, in the stage where credit providers are seeking business.

3. Basic Disclosure Requirements in South African Credit Law

The South African Law Commission identified consumer education and the supply of information as the most important objectives of consumer credit legislation in order to address the consumer’s unequal bargaining position, to curb malpractices and the exercise of remedies by credit providers, and to protect the consumer community. In its Policy Framework, the DTI

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11 See Susan Block-Lieb, Richard Wiener, Jason A Cantone and Michael Holtje ‘Disclosure as an Imperfect Means for Addressing Over-Indebtedness: An Empirical Assessment of Comparative Approaches’ in Johanna Niemi, Iain Ramsay and William C Whitford (eds) Consumer Credit, Debt & Bankruptcy (2009) 153 at 155 and 165 where the authors indicate that emotion plays a role in consumer decision-making and that enhanced disclosure might be a source of negative mood states for consumers and that consumers may enter into credit-shopping in order to escape the negative mood. However, in South Africa, access to credit is in effect limited by the National Credit Act 34 of 2005 in many ways. Some of the limitations are that the credit provider is compelled to make sure that the consumer understands the risks and costs of the proposed credit and his or her rights and obligations under a proposed credit agreement before the parties enter into an agreement (s 81(2)) and that a credit provider may not enter into a credit agreement with a consumer if it will make the consumer over-indebted (ss 81 and 79). Therefore, future credit decisions can not only be based on emotion; the existing financial means and obligations and the debt re-payment history of the consumer must also be assessed before credit can be granted.


13 Idem at 8-9 and 33-34.

14 For a general discussion of disclosure and the cost of disclosure in Canada see Alberta Law Reform Institute Cost of Credit Disclosure – Final Report No. 82 (2000).


16 Policy Framework at 26-27.
set out measures aimed at helping consumers to make informed choices. One such measure is the disclosure of information.

Before the Act came into force, very few consumers were aware of the total cost, the fees, charges, add-ons and so forth, of credit. The predecessors of the Act were also outdated and ineffective in this respect. Under the new policy on consumer credit, standardised disclosure of information and costs, in contracts and sales and marketing material, is required. The National Credit Act takes a highly prescriptive approach as to the form, content and time of disclosure. As a pre- contractual disclosure measure, the Act has also introduced compulsory quotes, which bind the credit provider for a set period. A supplementary aim of this pre-agreement disclosure is to help consumers to make informed choices and to shop among different credit providers.

Grové and Otto identify three levels of disclosure: (1) seeking business; (2) entering into a contract; and (3) post-contract disclosure. The first stage of disclosure entails seeking business in the form of credit advertising and issuing credit quotations. The second stage is where the parties enter into a contract and entails the formalities and disclosure in the contract document. The third stage of disclosure entails post-contract disclosure, where copies of the instrument of debt, periodic statements and statements on request are sent to the consumer. The National Credit made all three stages of disclosure compulsory, and they will now be discussed.

3.1 The First Stage of Disclosure: Pre-agreement Disclosure –Marketing and Credit Quotations

Pre-contractual disclosure includes marketing and credit quotations. The Act introduced new measures to regulate marketing. Negative option marketing is strictly prohibited. So a credit provider is not allowed to make an offer to enter into a credit agreement on the basis that the agreement will automatically come into existence unless the consumer declines the offer. If a credit agreement is entered into as a result of such scheme,
where the contract automatically came into force because the consumer did not decline an offer, the agreement will be void and unlawful.\textsuperscript{29}

When a credit provider and a consumer conclude a credit agreement, the latter must be given the opportunity of declining the option of pre-approved annual credit limit increases,\textsuperscript{30} and of being excluded from any telemarketing campaigns of the credit provider, marketing or customer lists that may be sold or distributed by the credit provider or any mass distribution of e-mail or SMS messages.\textsuperscript{31}

Consumers are also protected against certain marketing practices. Thus a credit provider must not

- harass a consumer in attempting to persuade the consumer to apply for credit or to enter into a credit agreement,\textsuperscript{32}
- enter into a credit agreement at a consumer’s private dwelling except where the consumer pre-arranged the visit, or where the credit provider sells goods or services and the credit is then incidentally offered or if the credit agreement falls into a category of credit agreements that is permitted to be concluded during such a visit;\textsuperscript{33} and
- visit a consumer’s place of employment for the purpose of inducing the consumer to obtain or apply for credit, except where the employer is the credit provider or where the visit results from a formal arrangement between the credit provider and the employer or as a result of a non-prompted invitation by the person being visited.\textsuperscript{34}

Consumers are also protected against certain advertising practices.\textsuperscript{35} Thus advertisements of the availability of credit or goods or services to be purchased on credit must not advertise a form of credit that is unlawful, must contain the required information, must not be misleading, fraudulent or deceptive, and must not contain any prohibited statement.\textsuperscript{36} Furthermore, any

\textsuperscript{29}Schalk van der Merwe, LF van Huyssteen, MFB Reinecke & GF Lubbe \textit{Contract: General Principles} 2 ed (2003) at 59), under common law a contract will not come into existence if an offeree-consumer simply ignores the offer.
\textsuperscript{29}Sections 74(4) and 89. If a credit agreement is unlawful, a court must under s 89(5)(\textit{a})-(\textit{b}) order that the credit agreement be void from the date entered into, and the credit provider must refund the consumer any money paid by the consumer, with interest calculated at the rate set out in the credit agreement and for the period from the consumer paid the money to the credit provider until the consumer is refunded. Furthermore, under s 89(5)(\textit{c}) all the rights of the credit provider (to recover any money paid or goods delivered to the consumer) under the credit agreement are either cancelled (unless the court concludes that doing so would unjustly enrich the consumer), or forfeited to the state (if the cancelling of the consumer’s right would unjustly enrich the consumer).
\textsuperscript{30}Section 74(6)(\textit{a}).
\textsuperscript{31}Section 74(6)(\textit{b}).
\textsuperscript{32}Section 75(1).
\textsuperscript{33}Section 75(2)(\textit{a})-(\textit{c}). It is submitted that credit providers may possibly use the ‘incidentally offered’ exception as a loophole in order to enter into credit agreements at consumers’ private dwellings and to escape the prohibition on credit agreements entered into at consumers’ private dwellings. Under s 75(5), these prohibitions do not apply to ‘developmental credit’. See ss 1 and 10 for the definition of ‘developmental credit’.
\textsuperscript{34}Section 75(3)(\textit{a})-(\textit{b}). Under s 75(4), the employer is not allowed to receive a fee, commission, payment or any monetary benefit in exchange for arranging a visit by a credit provider to the place of work or as a consequence of a credit agreement entered into during, or as a result of, such an arrangement.
\textsuperscript{35}Section 76. For the scope of application, see s 76(1)(\textit{a})-(\textit{c}) and (6), excluding certain general advertisements from these provisions.
\textsuperscript{36}Section 76(4)(\textit{a})-(\textit{c}).
advertisement concerning the granting of credit, the interest rate and other credit costs must be stated in the prescribed form.\footnote{37}

To assess compliance with the Act’s requirements after it came into force, the NCR undertook a project to review credit providers’ marketing material and advertisements.\footnote{38} Some of these advertisements did not comply with the Act, and other credit providers were asked to withdraw their advertisements; eventually, all the credit providers complied with the NCR’s suggestions.\footnote{39} But the main area of concern is still that some advertisements do not include all the information required by the Act, such as the total amount of instalments including interest, and fees and so on.\footnote{40} To ensure compliance, the National Consumer Tribunal has already issued some compliance notices\footnote{41} to credit providers who do not meet the marketing disclosure requirements (eg, advertisements containing misleading statements) so that they can remedy this non-compliance.\footnote{42}

It is thus clear that these marketing provisions aim at disclosing the total cost, charges and add-ons to credit. For consumers’ benefit, these provisions also clearly prohibit the misleading disclosure of information in advertisements. It is submitted that the requirements on marketing disclosure will help consumers to make better choices between credit and cash and between different credit providers and credit products.\footnote{43} At the same time, these requirements serve as an indirect measure that can be used to prevent consumers from concluding credit agreements that will make them over-indebted, because consumers are now, with the information available to them, able to make informed credit choices.

The second pre-contractual disclosure measure is the pre-contractual quotation,\footnote{44} one of the most significant disclosure measures introduced by the Act. It aims at promoting competition among credit providers by ensuring that consumers can compare the cost of different credit products offered by different credit providers and thus make informed choices.\footnote{45}

\footnote{37} Section 76(5). See Government Gazette 28864 of 31 May 2006 for the regulations to the Act. See regs 21 and 22 for the required content and format for advertising practices. These regulations require that advertisements disclose, among other things, the instalment amount, number of instalments, total amount of instalments, including interest and fees, the interest rate and the final amount payable (if any).


\footnote{39} Ibid.

\footnote{40} Ibid.

\footnote{41} Under s 55, the NCR may issue a compliance notice to someone who, among other things, does not comply with the Act. This notice must include the nature of the non-compliance with the Act and the steps required to remedy the non-compliance. If the person fails to comply with the compliance notice, an appropriate order may be obtained from the Consumer Tribunal, or the matter may be referred to the prosecuting authority if non-compliance with the notice constitutes an offence. See also JM Otto The National Credit Act Explained (2006) at 38 and the National Credit Regulator’s 2008 Annual Report at 27.

\footnote{42} See http://www.ncr.org.za/press_release/Rudco.pdf (23 August 2007) for a press release published after the NCR issued a compliance notice to Rudco Finance (Pty) Ltd to compel the latter to comply with the Act’s disclosure requirements.

\footnote{43} Policy Framework op at 26.


\footnote{45} National Credit Regulator’s 2008 Annual Report op at 28.
The Act requires a credit provider not to enter into a small, intermediate or large credit agreement unless that provider has given the consumer a pre-agreement statement and a quotation in the prescribed form. A quotation for a small credit agreement must include the credit amount, the deposit to be paid, the instalments (including interest and other fees and charges), the number of instalments, and the interest rate. Similarly, a quotation for an intermediate or large agreement must include the credit amount, the deposit, the total of additional charges, instalments in respect of the total amount deferred, the total cost and the interest rate. These quotations are binding upon the credit provider for five business days, subject to certain conditions. In essence, these quotations are an option created by statute, with the prospective customer as the option holder.

The NCR has investigated some credit providers’ compliance with the pre-agreement quotation provisions and found credit providers generally comply with the relevant provisions, but that some were not using the quotation forms prescribed. To comply with the Act, the NCR sent instructive letters to those who did not comply with the Act and asked them to implement corrective action. To ensure compliance, the National Consumer Tribunal can also issue compliance notices to credit providers who do not meet the pre-agreement disclosure requirements.

One can therefore conclude that compliance with the quotation requirements encourages competition among credit providers, because such compliance ensures that consumers can compare the cost of different credit products from different credit providers. This compliance also puts consumers in a position to make informed choices regarding credit. At the same time, pre-agreement quotations serve as an indirect measure that can be used to prevent consumers from concluding credit agreements that will make them over-indebted, because better-informed consumers are protected against taking up credit without proper thought. But, as stated above, the main area of concern is still that some credit providers do not comply with the pre-agreement disclosure measures and requirements (ie marketing and quotations requirements). In order to successfully apply pre-agreement disclosure as an indirect measure aimed at preventing over-indebtedness, compliance is of utmost importance.

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47 Section 92(1)-(2). The prescribed forms are contained in the Regulations to the Act (see Government Gazette 28864 of 31 May 2006 for the regulations to the Act). Regulations 28-29 contain the requirements for quotations for the different classes of credit agreements. See Form 20 of the regulations for the prescribed forms of quotations.

48 See s 92(2)(b) and Form 20.

49 Ibid.

50 See s 2(5) for the definition of ‘business days’.

51 Section 92(3)(a)-(b). See also s 94(4)-(7) for exceptions; JM Otto The National Credit Act Explained (2006) at 40.


54 Supra note 41.

55 See the Rudco press release op cit note 42.
3.2 The Second Stage of Disclosure: Entering Into a Contract

Entering into a contract, the second stage of disclosure, includes formalities and disclosure in the contract document.\(^{56}\) Although the Act does not prescribe any contract formalities, it does require the credit provider to deliver, without charge, a copy of his credit agreement to the consumer, or to send it, in printable electronic form, to the consumer.\(^{57}\) So a credit agreement should be in writing, because a copy of the agreement or a printable electronic form of the agreement must be delivered to the consumer.

The contract document must also disclose certain prescribed information.\(^{58}\) Intermediate and large agreements must include the rights and duties of the parties. The contract document must also spell out in detail and comprehensively all the financial implications of the agreement.\(^{59}\) Although intermediate and large contracts make full disclosure to consumers, the result is lengthy contracts that few consumers read and that can thus defeat the purpose of full disclosure.\(^{60}\)

Nevertheless, disclosure in the contract can serve as an indirect protection measure that prevents consumers from concluding further credit agreements that will make them over-indebted. With the information available to them, consumers can make informed choices regarding credit.

By itself, though, the requirement of full disclosure, as an indirect measure, is not sufficient to ensure full disclosure.\(^{61}\) The consumer may still struggle with formal contractual language and information that makes no sense to him or her. At the same time, credit providers are generally unwilling to explain the meaning of contractual clauses.\(^{62}\) Parliament therefore incorporated the reckless credit provisions\(^{63}\) in the Act: these compel the credit provider to make sure that the consumer understands the risks and costs of the proposed credit and his or her rights and obligations under a proposed credit agreement. In essence, these provisions entail that a credit provider may not enter into a credit agreement without first taking reasonable steps to assess the


\(^{57}\) Section 93(1). The prescribed forms for small, intermediate and large credit agreements are set out in regs 30 and 31. See also s 65 for delivery of documents required under the Act. See Michelle Kelly-Louw ‘The Prevention and Alleviation of Consumer Over-indebtedness’ (2008) 20 SA Merc LJ 200 at 213-214.

\(^{58}\) Section 93(2)-(3) and regs 30-1 prescribe certain information for credit agreements. Small, medium and large agreements each have their own requirements regarding information that should be disclosed in the contract document. Regulation 31(1)(d) requires that the lettering of the matters that are required to be disclosed in an intermediate or large credit agreement must be given equal prominence to the body of the rest of the document. One can therefore assume that matters required to be disclosed cannot be printed in small print. See also Michelle Kelly-Louw ‘The Prevention and Alleviation of Consumer Over-indebtedness’ (2008) 20 SA Merc LJ 200 at 213-214.

\(^{59}\) Regulation 31; JM Otto The National Credit Act Explained (2006) 41.

\(^{60}\) JM Otto The National Credit Act Explained (2006) 41.

\(^{61}\) Policy Framework at 26.

\(^{62}\) Ibid.

\(^{63}\) See Philip N Stoop ‘South African Consumer Credit Policy: Measures indirectly Aimed at Preventing Over-indebtedness’ (2009) 21 SA Merc LJ 365 at par 2.1 for reckless credit as a direct measure aimed at preventing and resolving consumers’ over-indebtedness.
consumer’s understanding of the risks and costs of the proposed credit and his or her rights and obligations under a proposed credit agreement.  

Parliament also adopted other indirect measures that are supplementary to the disclosure measures. One of them is the outright prohibition of certain undesirable contract clauses and contractual practices, and the inclusion of certain standard protective clauses in consumer credit contracts. The Act renders certain credit agreements unlawful and forbids certain specific provisions in credit agreements. Among other things, a provision of a credit agreement will be unlawful if its general purpose or effect is to defeat the purposes of the Act or to deceive the consumer, or if it subjects the consumer to fraudulent conduct. A provision will also be unlawful if it indirectly or directly waives or deprives a consumer of a right set out in the Act, avoids a credit provider’s duty in terms of the Act, sets aside or overrides the effect of any provision of the Act, authorises a credit provider to do anything that is unlawful in terms of the Act, or authorises him to fail to do anything required in terms of the Act. Nor may a credit agreement purport to waive or deprive a consumer of his common-law rights. Furthermore, the Act prohibits specific clauses and clauses with a specific purpose.

As an indirect measure, disclosure, supplemented by the provisions regarding reckless credit, unlawful provisions and unlawful agreements and plain language, can be used to prevent the consumer from entering into credit agreements that will make him over-indebted. This indirect measure has the effect of disclosing all relevant information to the consumer, who will then be able to make informed choices. But, if credit providers do not comply with pre-agreement disclosure measures and requirement, over-indebtedness will not be indirectly prevented. So, compliance is of utmost importance.

### 3.3 The Third Stage of Disclosure – Post-contractual Disclosure: Copies of the Instrument of Debt and Statements

Post-contractual disclosure, the third stage of disclosure, includes the provision of a copy of the debt instrument and periodic statements to the consumer.

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64 Section 81(2)(a)(i); as well as his debt-repayment history (s 81(2)(a)(ii) and his existing financial means, prospects and obligations (s 81(2)(a)(iii)).
65 *Policy Framework* at 26. An example of a prohibition of a certain practice is the prohibition of negative option marketing (see par 3.3.1 supra).
66 See s 89 for unlawful agreements.
67 See s 90 for unlawful provisions.
69 Section 90(2)(a).
70 Section 90(2)(b).
71 Section 90(2)(c).
72 Section 90(2)(d)-(o) and s 90(3)-(4) address the effect of unlawful agreements and provisions. See also JM Otto *The National Credit Act Explained* (2006) 42-46 for a detailed discussion of unlawful agreements and provisions.
73 Plain language requirements can protect a consumer against the effect of over-disclosure, by making the disclosed information understandable and useful. For further discussion see Jeffrey Davis ‘Protecting Consumers from Overdisclosure Gobbledygook: An Empirical look at the Simplification of Consumer-credit contracts’ (1977) 63 Virginia Law Review 841.
The Act contains detailed provisions on statements of account in respect of content, form and frequency. Thus a credit provider is obliged to offer to deliver periodic statements of accounts to each consumer. The maximum period between issuing of statements of account is generally one month, two months in respect of an instalment agreement, lease or secured loan, and six months in respect of a mortgage agreement. Although the credit provider and consumer may agree to reduce the frequency of bi-monthly and monthly statements of account, the agreement may not provide for more than three months between deliveries of successive statements of account. The statement must be in the prescribed form, and the opening balance shown in each successive statement must correspond with the balance shown in the preceding statement. The NCR has the power to publish guidelines for methods of assessing whether a statement satisfies the prescribed requirements.

A consumer may, at any time, request a credit provider to deliver a statement of the current balance, any amounts credited or debited, amounts currently overdue, and amounts currently payable. The credit provider must then deliver the statement of account, without charge, to the consumer. The requested statement must be delivered within ten business days if the requested information relates to a period of one year or less before the request was made, or within twenty business days if the requested information relates to a period of more than one year before the request was made. The requested statement may be delivered orally, in person, by telephone, or in writing, either to the consumer in person or by SMS, mail, fax, e-mail or other electronic form of communication (ie, to the extent that the credit provider is equipped to offer such facilities). But the credit provider is not obliged to provide a further statement if a written statement was given three months before the request was given or if the account was closed more than three years before the request was given. If the credit provider fails to deliver within time or to offer statements, the Consumer Tribunal, on application by the consumer, can order the credit provider to provide statements.

In addition, the Act requires that the credit provider must deliver, without charge, a copy of their credit agreement to the consumer, or send the consumer a copy of the agreement in a printable, electronic form. A credit agreement should thus be in writing, because a copy of the agreement, or a printable electronic form of the agreement, must be delivered to the consumer.

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75 Sections 107-115. Regulation 35 prescribes certain information that must form part of a statement of account in the case of a small credit agreement. See Form 26 for the prescribed form for small credit agreements. See also JM Otto The National Credit Act Explained (2006) at 61.
76 Section 108(1).
77 Section 108(2)(a)-(c). See ss 8-11 for the classification of credit agreements.
78 Section 108(3)(a).
79 Section 109(1)-(3).
80 Section 109(4).
81 Section 110(1).
82 Section 110(2).
83 Section 110(3).
84 Section 110(4). Under s 110(5), the Consumer Tribunal may make an order limiting the credit provider’s obligations to a consumer for the delivery of statements of account if the Tribunal is satisfied that consumer’s requests are vexatious.
85 Section 114(a). For disputes concerning statements, see ss 115 and 111.
86 Section 93(1). The prescribed forms for small, intermediate and large credit agreements are set out in regs 30 and 31. See also s 65 for delivery of documents required under the Act. See JM Otto The National Credit Act Explained (2006) at 41.
To ensure compliance, the NCR can issue compliance notices\textsuperscript{87} to credit providers who do not meet the instrument of debt and statement of account disclosure requirements.

This indirect measure has the effect of disclosing all relevant information to the consumer during the existence of the credit agreement. The consumer is then (given his or her current financial and debt status) able to make an informed choice regarding future credit, especially where a consumer entered into several small loan agreements. So the consumer is protected against taking up further or future credit without proper thought, and is also in a position to plan his or her own financial administration.

4. Conclusion

Disclosure as an indirect measures have the capability of preventing over-indebtedness and overspending, provided that they are complied with and address the issues of a lack of information (only if the lack of education is also addressed). When a lack of information (and education) is addressed, consumers’ ignorance will be relieved and, at the same time, with more information available to them, they will be protected against taking up credit without proper thought.\textsuperscript{88} By itself, though, the requirement of full disclosure, as an indirect measure, is not sufficient to ensure full disclosure. The consumer may still struggle with formal contractual language and information that makes no sense to him or her and credit providers are generally unwilling to explain the meaning of contractual clauses. Parliament therefore incorporated the reckless credit provisions in the Act. In essence, these provisions entail that a credit provider may not enter into a credit agreement without first taking reasonable steps to assess the consumer’s understanding of the risks and costs of the proposed credit and his or her rights and obligations under a proposed credit agreement.

Usually, people who act with complete information choose outcomes that maximise their benefits and minimises costs. Disclosure (in the wide sense) can therefore, indirectly prevent over-indebtedness.

\textsuperscript{87} Under s 55, the NCR may issue a compliance notice to someone who, among others, does not comply with the Act. This notice must set out, among other things, the nature of the non-compliance with the Act and steps that are required in order to remedy the non-compliance. If the person fails to comply with the compliance notice, an appropriate order may be obtained from the Consumer Tribunal or the matter may be referred to the prosecuting authority if non-compliance with the notice constitutes an offence. See also JM Otto \textit{The National Credit Act Explained} (2006) at 38.

\textsuperscript{88} See Melanie Roestoff & Stéfan Renke ‘Solving the Problems of Overspending Individuals’ (2003) 24 \textit{Obiter} 1 at 22-23.