

**UNIVERSITY OF KWAZULU-NATAL**

**PERCEPTIONS OF THE NATIONAL CREDIT ACT: A CASE STUDY OF  
WOOLWORTHS HILLCREST**

**By  
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201501495**

A dissertation submitted in partial fulfillment of the requirements for the degree  
of Master of Business Administration

Graduate School of Business and Leadership

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2014**

## Declaration

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## **Abstract**

The National Credit Act (NCA) was enacted to replace the previous credit regulations that failed to address the needs of the consumer credit market. The credit market in South Africa was in disarray due the country being divided into two; the richer whites and the poorer blacks. The study seeks to establish how the NCA is viewed by consumers. The study considers whether the NCA is viewed as beneficial by consumers and credit providers, whether there is sufficient protection for consumers and whether consumers have an understanding of the NCA. The research methodology used was the qualitative research approach as it allows respondents to share their attitudes and experiences on the topic. Purposive sampling was utilized because respondents with knowledge on the topic were interviewed. The data collection was that of primary data in the form of semi-structured interviews because it affords respondents a great deal of flexibility in their responses as they are not confined to the questions and are encouraged to provide extra information they may have. Eight in-depth, face-to-face interviews were conducted. Some salient findings of the study indicated that the NCA provides consumers with protection by introducing procedures that must be followed by credit providers prior to granting credit. These procedures assess whether consumers are able to afford to repay their debt by considering their income, expenses and credit history. There appeared to be some division as to whether or not consumers understand the purpose to the NCA. The NCA was also viewed as beneficial due to all the sections that afforded consumers protection from the uneven bargaining power of credit providers. The main recommendations of the study were that a greater need for awareness or training of staff is required to spread knowledge and information, intervention programmes and responsible advertising.

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## List of Acronyms and Abbreviations

APR	Annual Percentage Rate
ASGISA	Accelerated and Shared Growth – South Africa
CCA	Consumer Credit Account
CFA	Consumer Federation of America
CPA	Consumer Protection Act
DTI	The Department of Trade and Industry
ICRO	Investigation and Consumer Reporting Office
LSM	Living Standard Measure
GDP	Gross Domestic Product
MFI	Microfinance Institutions
MFRC	Microfinance Regulatory Commission
NCA	The National Credit Act
NCPA	National Consumer Protection Agency
NCR	The National Credit Regulator
NCT	The National Consumer Tribunal
NDMA	National Debt Mediation Association
NLR	National Loan Register
NGO	Non-governmental Organization
SARB	South African Reserve Bank

# CHAPTER ONE – INTRODUCTION

## 1.1. Introduction

South Africa has made a great deal of progress with regard to economic growth since 1994. The country still feels the ripple effects of the previous apartheid regime. The Accelerated and Shared Growth Initiative (ASGISA) – South Africa (ASGISA, 2006) refers to two economies. The first economy is categorized as being modern, wealthier and developed – being similar to a first-world country. The National Credit Regulator (NCR)(NCR,2007) in its Annual Report also makes reference to the first economy as having a functional credit system. The second economy is undeveloped and poverty-stricken. In it, there are underprivileged people who lack adequate skills and education that would equip them to obtain jobs. As a result of parents being poor, the older siblings educate and look after the younger siblings. This has the effect of creating a burden on the children and makes it harder to break the poverty cycle.

It is the Department of Trade and Industry (the dti) that is at the custodian of protection of consumer rights and credit policy. The aim is to regulate credit, educate consumers, and provide consumers with protection from the unequal power of credit providers.

This study is aimed at identifying and understanding perceptions of the NCA. The study will be beneficial to consumers, credit providers, credit regulators and the drafters of NCA. The study will consider the views of those who are affected by NCA, their understanding, and its implementation.

This chapter will focus on the background and context, objectives, research methodology, and limitations of this study.

### **1.1.1. Background and Context**

Many South Africans, as a result of the imbalances created by apartheid laws, were left economically crippled. As a consequence, many people were unable to afford to acquire assets by paying cash, and they would turn to using credit to acquire assets. The Usury Act of 1968 was the predecessor of the NCA; it was implemented during apartheid and, as a result, it was flawed because it excluded non-white citizens. The implementation of the Usury Act Exemption meant that interest was not regulated on small loans, which led to a boom in the lending industry. The effects of this policy were felt by the urban, employed people whilst poor, rural South Africans were excluded. The consequence to the industry was an exclusion from the banking sector of lower-income earners (Meager, 2005).

The South African Reserve Bank (SARB) and the NCR state that consumer spending is still high despite the effects of recession (Kelly-Louw, 2008). It is this consumer spending that has left consumers over-indebted and seeking assistance of debt review (Coetzee & Roestoff, 2012). According to Steyn (2012) in 2011 retail sales, demand for credit and spending of consumers increased with rates of rentals in residential areas and taxes.

A legislation reform was necessary in consumer credit law due to the lack of effectiveness of the former consumer credit legislation in addressing the needs of the consumer credit market, complex as it may be (Business Day, 2006). The previous United Nations Secretary General, Mr. Kofi Annan, stated regarding the ability to obtain credit that it “helps alleviate poverty by generating income, creating jobs, allowing children to go to school, enabling families to obtain health care and empowering people to make choices that best serve their needs” (Lee, 2006, p.524). The NCA seeks to enforce the principles enshrined in the Constitution by giving consumers access to a fair credit system that seeks to empower black South Africans within the credit industry (NCA, 34 of 2005).

NCA replaced the Usury Act when it was brought into law by the South African President in March 1996. The NCA seeks to provide a measure of protection to the consumer because it considers the consumers' personal income and expenditure and their ability to repay a debt. The purpose of NCA was to bring about one system that would regulate credit. The NCA would also try to increase within the credit industry, black economic ownership and empowerment. Consumers are provided with protection from unfair credit practices and to make reckless credit borrowing illegal (National Credit Act 34, 2005).

### **1.1.2 An Overview of the NCA**

The South African credit market was flawed because it was made up of different pieces of legislation that were tasked with regulating certain aspects of credit. This was to result in abusive practices and high interest rates charged to low-income earners. These low-income earners (most of whom constitute the uneducated section of consumers) were only able to access micro-loans that were charged at high prices for credit. The effect on these uneducated consumers was that they were unable to repay their debt. The NCA sought to merge all of the Acts that were applicable to consumers and credit, namely:

- a) The Credit Agreements Act of 1980.
- b) The Usury Act of 1968.
- c) The Usury Exemptions Act of 1999.

The NCA can be summed up as focusing on a consumer's ability to repay debt, disclosure of the cost of credit and interest rate caps. The NCA is applicable to credit agreements between parties. A credit agreement can be defined as:

- a) a credit transaction – installment credit, mortgage agreement or any other agreement;



- b) a credit provider undertakes to furnish goods or services or make a payment of an amount to a consumer; and
- c) a credit guarantee – a promise to fulfill a demand or an obligation of another consumer in terms of a credit facility or transaction combination of the above (NCA, 2005:32).

The NCA places the burden of assessing creditworthiness of the consumer on the credit provider. The NCA also places the onus on the credit provider to be vigilant, or else, the credit agreement can be rendered null and void. The consumer is also afforded certain rights such as the right to seek credit and transparency as to why credit is being declined. Consumers are given protection from a credit limit that is automatically increased. Should there be a dispute between the credit provider and consumer, the judge is given the discretion to delete the outstanding debt, should it be discovered that the credit provider engaged in reckless lending, which is prohibited by NCA (NCA, 2005).

The NCA resulted in the formation of the National Credit Regulator (NCR) and the National Consumer Tribunal (NCT), which were tasked with implementing the provisions of the NCA. The NCR which operates independently was established in terms of the NCA, and it operates in terms of the Public Finance Management Act 29 of 1999. It was established on 1 June 2006. The main functions are:

- a) to create education and awareness of the NCA to its consumers;
- b) regulation of credit bureau, credit provider and debt counselor;
- c) advise government on legislation and policy; and
- d) conduct research on the credit market and consistently oversee the cost of credit, any restrictions that may have a consequence on credit markets, and enforce the NCA and the sanctions imposed on those who are in contravention of NCA (NCA, 2005).

The NCR can be one of the vehicles used to obtain relief regarding consumer affairs along with the Ombudsman, whether it is a complaint linked with the credit information or banks, or any other complaint. There is also the Provincial Consumer Desks that attend to consumers' complaints.

The NCT also operates independently and is tasked with the adjudication of matters where there are practices or conduct that is prohibited. Fines can be issued, and this provides a forum for consumers to be heard. The NCT also acts as a forum of appeal for credit providers and consumers from any decisions that are made by the NCR.

### **1.1.3. Woolworths History**

Woolworths is a retail chain store that opened in Cape Town in October 1931. The founder, Max Sonnenberg, opened the dynamic store with a policy that differentiated it from its competitors. A second branch was opened in Durban, and two more branches were opened in Port Elizabeth and Johannesburg, which symbolised the success of the brand (Woolworths, 2011).

The number of stores has grown rapidly to more than 400 branches in South Africa, Africa and the Middle East. Woolworths has always placed consumers and their needs at the centre. The company also aimed at being ahead of the pack by understanding and embracing technology; they were utilizing cash registers in the 1960s (Woolworths, 2011).

Woolworths continued to be pioneers in their product offering; in 1974, it was Woolworths that introduced the notion of "sell by" dates on food labels. Woolworths also prides itself in offering convenience to consumers (Woolworths, 2011).

To facilitate growth within Woolworths, one of the giant leaps taken by retailers was to introduce financial products.

The services are:

- a) the card: the product gives consumers access to credit when purchasing any Woolworths merchandise;
- b) the cash card: the card allows cash customers to be eligible for discounts when they use the card;
- c) the credit card: a credit facility is given to the consumer, according to their affordability;
- d) personal loans: customers are given access to short-term personal loan; and
- e) insurance: there is a variety of insurance products being offered, including car, home, cellphone and travel insurance ([www.woolworths.co.za/store/fragments/wfs/wfs-index.jsp](http://www.woolworths.co.za/store/fragments/wfs/wfs-index.jsp)).

According to Steyn (2013) retailers are experiencing strain as a result of economic times that are relatively uncertain. Retailers rely on consumer spending, which is 60% responsible for economic growth. A research study by Deloitte (2012) that was commissioned by the NCR depicts clothing accounts as the most frequently used type of credit, followed by personal loans, furniture and credit cards.

According to Woolworths Annual Report (2008), there was a decline in the growth of new accounts that was as a result of the impact of the NCA introducing more stringent control measures and a decrease in credit use due to interest rates being high. There was an increase in bad debts within the first six months of the year but by year end, the position had stabilized. The same year, Woolworths card revenue was low with less customers and card usage decreased with 27.2% of retail sales coming from the card. The introduction of the NCA had an impact on retail stores such as Woolworths and this study seeks to take a closer look at the impact. The figure below depicts the decline in credit of Woolworths cards.

The figure below depicts the percentage of sales that can be attributed to clothing and general merchandise in relation to food.

**Figure 1: Percentage of sales on Woolworths cards**



Source: Woolworths Holdings (2008)

Figure 1 indicates that from 2007 till 2008 there has been a decline in sales from 32.2% to 27.2%. A factor that contributed to the decline in sales was the introduction of the NCA because there measures introduced to access whether consumers could afford credit based on affordability

## **1.2. The extent of the Indebtedness of South Africans**

According to the SA Reserve Bank Quarterly Bulletin (2007), household debt levels were at 76.6% in the second quarter of 2007. The rise in credit could also be attributed to financial deregulation, increase in household wealth and decreasing interest rates. The SA Reserve Bank Quarterly Bulletin (2007) confirms that consumer spending has increased, and it attributes it to a rise in disposable income.

## **1.3. Focus of the Study**

The study will be based on credit providers of Woolworths Hillcrest and their interaction with the NCA. As already mentioned, Woolworths is a company founded in

1931 by Max Sonnenberg. He believed in giving customers superior quality merchandise at reasonable prices. Woolworths Hillcrest sells clothing for men, women and children. It also has a homeware and food section. Their customers are people who are willing to spend a little bit extra for quality products. Woolworths sells their products using cash and credit. They have also created a personal loan facility.

The retail credit industry and the credit industry in general are problematic. The Rural Development Framework (1997) differentiates between the targeted groups of rural women, children, farm workers, small farmers and disabled groups that require support. This was argued as inadequate policy differentiation. The Strauss Commission (1996b) identifies subgroups in rural areas making emphasis income source and/or gender as an important differentiator. The various groups require specific types of financial services.

The current attempts to supply retail funds to South Africans, depicts a negative picture about the prospects of increased access to rural financial services. Supply of financial services including retail credit has been neglected in rural areas when compared with urban areas. There is a system of decentralized financial services, which is focused on saving, e.g. stokvels and as a result, great deal of limitations regarding access to credit (Graham & Von Pischke, 1995). Woolworths is focused on quality products that customers are willing to pay a little more for but they have shifted their focus to more affordable quality products to accommodate a wider range of customers.

The study is aimed at providing both the consumer and the credit provider (within retail) with knowledge and insight into the NCA. This study tries to highlight where the problem areas are and what needs to be considered when credit is granted, in order to help credit providers be more responsible. The onus is on credit providers to comply with the NCA by ensuring that a person's credit history and finances are checked before credit is granted (NCA, 2005).

#### **1.4. Problem Statement**

There are many people in South Africa who seek credit, whether it is to purchase a home, a car, furniture, or just to access cash on credit. Many people who seek access to credit are not aware of the financial implications of the credit agreements they engage in. People are also seeking credit which they may not be able to repay in the future. The NCA was implemented with the intention of addressing these issues (Lee, 2006).

According to Moorad (2013), high unemployment in South Africa and income growth that is slow, have caused a decline in household spending due to increasing utility costs and rising debt. Unsecured lending has decreased which is a contributing factor that leads to consumers finding it difficult to repay loans and settle their accounts. The Johannesburg Stock Exchange (JSE) general retailer's index decreased 3.7% in 2013. Credit plays a role in the economy and as a result it is important to consider how it is perceived.

The question that this study seeks to address is whether the NCA is viewed as beneficial, protective, and as a tool for consumer to protect themselves from the uneven power of credit providers.

#### **1.5. Aim and Objectives**

This study is focused on the perceptions of credit providers of the NCA from the angle of a provider of credit and the consumers they interact with daily. It places a focus on whether the NCA is viewed as benefiting the consumer by acting as a measure of information and protection. The focus is on whether credit providers understand who the NCA is trying to protect and whether the NCA provides sufficient protection or whether this piece of legislation failed to provide protection to consumers.

The aim of this study was to gain a greater understanding of how the NCA is viewed by the people who are affected by it.

There are four objectives in the study:

- a) To determine whether consumers view the NCA as beneficial.
- b) To establish whether consumers understand the purpose of the NCA.
- c) To determine whether credit providers view the NCA as beneficial.
- d) To determine whether the NCA effectively prevents unfair credit practices.

## **1.6. Research Methodology**

This study employed the qualitative research approach. Qualitative research, which is based on descriptions and the way a person interprets a situation, allows the respondent to voice any personal experiences and examples in order to add “richness” to the content of the data. Qualitative research lays the ground for an open system because it encourages the respondent to speak openly on a topic (Dunn, 2010).

Secondary data was collected from journals, books and the Internet. The history of the NCA is identified, and its impact on the consumers it seeks to protect is identified in the literature. It is this impact on consumers and credit providers that formed part of the framework for the analysis.

### **1.6.1. Sampling and Sampling Size**

Purposive sampling was used to obtain information from targeted groups according to their ability to be available. The information was limited to the people who were able to provide it. The study focused on respondents who have a good knowledge of the

NCA, whether it is persons who have practical dealings with the NCA or persons who were responsible for drafting the NCA.

### **1.6.2. Data Collection and Data Analysis**

The study combined primary and secondary sources. According to Sekaran and Bougie (2010), primary data is collected by the researcher, and secondary data is gathered from existing sources. Primary data can be collected from numerous methods, such as interviews. The study made use of semi-structured interviews. Semi-structured interviews are best suited for this research because they provide a great deal of flexibility to the respondents, who are encouraged to provide extra information that can add another dimension to the study. Questions can also be added to the interview, and the responses are noted by taking down notes or through tape recording (Gray, 2004).

Extensive research of the literature was first conducted, followed by semi-structured, in-depth interviews which were conducted with eight respondents. A tape recorder was used, when possible, or the interviews were recorded by means of writing notes. Data analysis was then conducted using Hermeneutical Analysis, which is not finding the objective meaning but rather telling people a story using their words, which can also assist to condense and evaluate the data (Van Manen, 1990).

Data analysis is the inferences that can be made from the data collected. According to Miles and Huberman (1994), data analysis is made up three steps: data reducing, data display and drawing conclusions. Data analysis is done best where there is a good understanding of the person being interviewed, the interviewer is open-minded and there are good listening skills from the interviewer. Direct quotes may also be used as a way of getting the most meaning from the interview (Reason & Rawlings, 1981).



## **1.7. Limitations of the Study**

A limitation of this study was time and availability. Many respondents gave an undertaking that they could partake in the interview but did however not follow through when it came to setting a date and time. It became apparent that despite many respondents being requested to participate in the interviews, only a few were willing to participate.

The study seeks to gain an understanding of the way NCA is perceived. However, the perceptions of the credit regulator could not be obtained, and this could have added another dimension to the study. The study therefore draws on the views of the Woolworths Hillcrest credit providers and an employee of the dti.

## **1.8. Overview of the Study**

The chapters in the dissertation are organized as follows:

- a) Chapter 1 introduced the study and presented the background, objectives, an outline of the methodology, and study limitations.
- b) Chapter 2 presents the literature review and focuses on the evolution of the NCA and the impact of the NCA.
- c) Chapter 3 explains the research methodology and elaborates on the data collection methods and analysis.
- d) Chapter 4 presents the findings from the data collected from the interviews, and relates the findings to previous research.
- e) Chapter 5 sets out the conclusion and recommendations.

## **1.9. Conclusion**

In this study, the focus was on how the NCA was perceived by those who are affected by it. The study seeks to gain an understanding of the way the NCA has impacted the

lives of people and whether it satisfies the intention of the legislature. This chapter highlighted the background, problem statement, objectives, research methodology, and limitations of the study.

In the next chapter, a literature review which focuses on how the NCA evolved from previous legislation and the way it has impacted society, is presented. The focus will also be on consumer behaviour and how internal and external factors play a role (Lejniece, 2011).

## **CHAPTER TWO – LITERATURE REVIEW**

### **2.1. Introduction**

This chapter aims to take a closer look at the relevant literature pertaining to the NCA, which was introduced to support the economic and social welfare of South Africans through a transparent, fair and accessible credit market designed to reduce the risk of people incurring more debt than they can afford to service.

According to the dti (2004) policy framework for consumer credit, the government played a pivotal role in providing the stage for economic players – private, public, companies and consumers – that are striving for and to obtain economic transformation. In those industries that require regulation, government has implemented mechanisms that open the economic advantages of that industry whilst ensuring that social costs are kept at a minimum, and not forgetting to address social objectives, such as black economic empowerment.

### **2.2. Definition of Consumer**

The Consumer Protection Act (2008, p.18) defines a consumer as:

- “(a) a person to whom those particular goods or services are marketed in the ordinary course of the supplier’s business;
- (b) a person who has entered into a transaction with a supplier in the ordinary course of the supplier’s business, unless the transaction is exempt from the application of this Act by section 5(2) or in terms of section 5(3)”

A consumer is someone who can make the decision on whether or not to purchase an item at the store, and someone who can be influenced by marketing and advertisements. Any time someone goes to a store and purchases a toy, shirt, beverage, or anything else, they are making that decision as a consumer.

According to Mcquoid-Mason (1997), a consumer is defined in the broad sense as everyone in society, or in a narrow sense as any person who uses goods and services. Based on the Free Dictionary (2003), a consumer is defined as one who acquires goods and services to use or own.

The NCA (2005, p.9) defines a consumer as:

- a) *“the party to whom goods or services are sold under a discount transaction, incidental credit agreement or installment agreement;*
- b) *the party to whom money is paid, or credit is granted, under a pawn transaction;*
- c) *the party to whom credit is granted under a credit facility;*
- d) *the mortgagor under a mortgage agreement;*
- e) *the borrower under a secured loan;*
- f) *the lessee under a lease, not for immovable property;*
- g) *the guarantor under a credit guarantee;*
- h) *the party who received money or credit under any other credit agreement”.*

### **2.3. Credit Defined**

According to Oxford Dictionaries, credit is acquisition of goods and services based on mutual agreement that payment will be received at a future date. The term may also have reference to the borrowing capability of a company or individual.

The credit provider is referred to by the NCA (2005, p.11) as:

- a) *“the party who supplies goods or services under a discount transaction, incidental agreement or installment agreement;*
- b) *the party who extends credit under a credit facility;*
- c) *the mortgage under a mortgage agreement;*

- d) *the lender under a secured loan;*
- e) *lessee under a lease, not for a secured loan”.*

## **2.4. South Africa’s Economy**

According to Nowack and Ricci (2005), in 1994, the current government was to inherit the economic and social effects of apartheid. The country was made up of a large number of unskilled and unemployed workers; vast poverty; below average access to education; and health for most of the population was poor. The adverse impact of HIV/AIDS resulted in the health system experiencing strain and also saw a decline in life expectancy. As a result of internal capital controls, economic sanctions and political isolation from the rest of the world, South Africa’s economy was cut off from the rest of the world. Despite facing so many obstacles, South Africa was able to raise its economic growth and standard of living for the people. During 1995 and 2003, real gross domestic product (GDP) grew by about 3%, approximately double the growth rate recorded between 1980 and 1994. Economic performance strengthened due to the government’s focus on public finances and the increase in productivity performance as a result of the removal of trade sanctions in the 1990s.

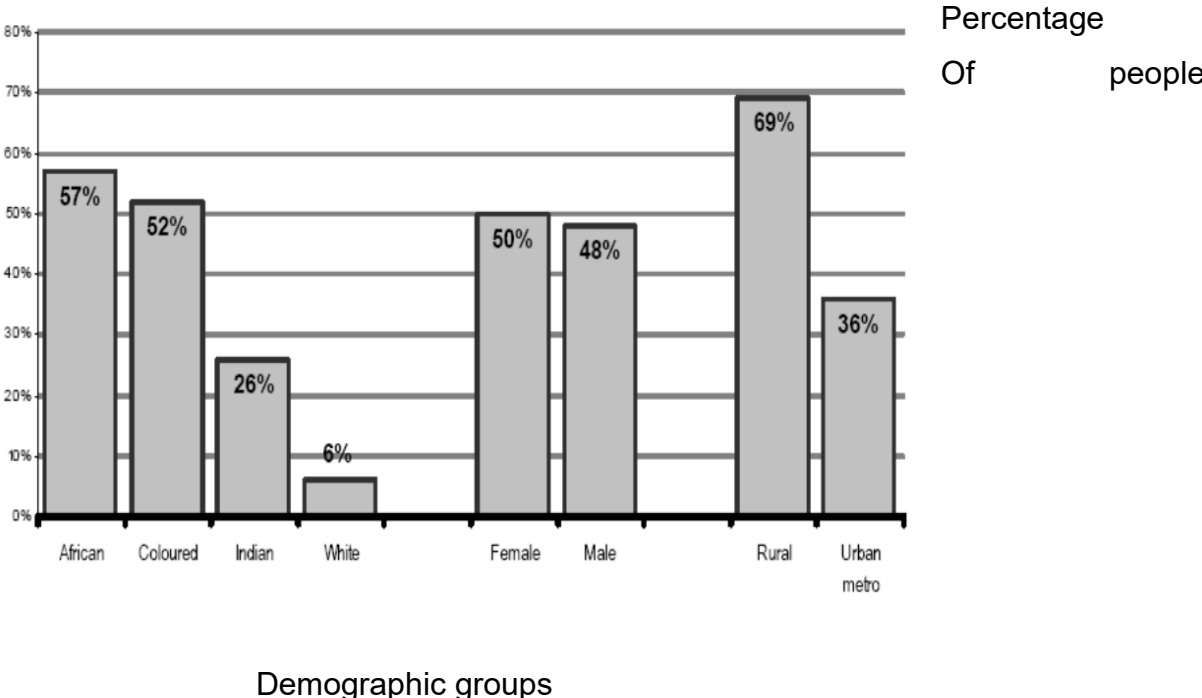
## **2.5. The Impact on Poor Communities**

The formal and informal providers make up the South African financial services setting. Formal financial service providers are governed by official laws and regulations, i.e. bank accounts, credit cards and annuities. Formal services are easily available in South Africa’s urban areas, but they fail to cater for the needs of the poor. The informal financial services sector encompasses stokvels and mashonisa’s (loan sharks) giving out loans. There is no adherence to the informal financial services laws except those that work for their members (NCR, 2007).

As a result of South Africa’s past, there is a strong link between a person’s race and their income bracket. Poor (usually black) households usually utilise informal, unregulated financial services regardless of the costs and risks due to the convenience of the products (Community Microfinance Network, 2004).

Figure 2.1 below gives an indication as to the percentage of demographic groups in South Africa who do not have a bank account

**Figure 2.1: Table depicting demographic groups without bank accounts**



Source: Southern Africa Regional Poverty Network (2005)

Figure 2.1 depicts the various demographic groups that lived without a bank account. In 2005, 48% of South African adults did not have basic banking facilities.

**2.6. Rise in Consumer Debt**

According to Kelly-Louw (2008), despite the impact of the recession, statistics by the SARB and the NCR revealed that consumer spending is still high.

As a result of high consumer spending, many consumers have become over-indebted; this fact is elucidated by the large number of consumers that requested debt review based on the NCA (Coetzee & Roestoff, 2012).

Generally, the manner in which consumers spend and save is determined by factors such as material needs, social needs, living standards, traditions, indebtedness and net worth. Within households, consumption expenditure is determined by actual and expected changes to consumer's income and their ability to utilise future income today through the use of credit cards.

According to Steyn (2012), 2011 proved to be a year where retail sales, credit demand and consumer spending rose along with an increase in residential rental rates and government tax. The largest growth since the 2009 recession occurred in the third quarter of 2011, which was up by 1.5%, according to the quarter labour force survey. Credit demand rose 6.2% year on year based on November and December SARB figures. The NCR stated that credit applications rose by 20.83% in 2011.

According to Ebony Consulting International (2004), over-indebtedness is as a result of (i) aggressive lending, and (ii) uninformed or naïve clients.

**Table 2.1: Literacy and basic education aged 15 and over**

<b>Level of Education</b>	<b>General Population Census (1996)</b>	<b>General Population Census (2001)</b>
Full generation education (grade 9 and above)	13.1 million	15.8 million
Less than full generation	13.2 million	14.6 million

education (less than grade 9)		
Less than grade 7	8.5 million	9.6 million
No schooling	4.2 million	4.7 million

Source: Aitchison and Harley (2004).

Table 2.1 depicts the basic level of education amongst South Africans from 1996 to 2001. In 2001, approximately 16% of the adult population was not schooled. This table indicates that, from 1996 to 2001, millions of people in South Africa were not educated and, as a result, would lack the requisite consumer understanding of the NCA.

According to Ferk (2007), debt is a tool of sustaining consumption over a period of time. Households can be faced with a situation where they are over-indebted and unable to sustain their debt; for example, if a household's circumstances change due to retrenchments or death. The economy will also feel the ripple effect of over-indebtedness in the event that households fail to pay their debt. This is due to the effect of households' spending and saving patterns.

Business Day Editorial (2007) argues that the increase in credit is a result of greater access to credit for low-income earners as a result of employment instead of demand from the previous borrowers. The article also states that government's R416 billion infrastructure spending initiative resulted in a credit boom that was assigned to corporate borrowing. The article makes an interesting point, namely, that the increase in corporate borrowing will have positive effects on the economy.



## **2.7. The Evolution of the NCA: Historical Overview**

Usury legislation is the predecessor of NCA, it sought to regulate credit of whites to the exclusion of non-whites in South Africa but this piece of legislation was flawed as a result of how credit legislation has evolved, which follows below.

According to the South African Law Commission Working Paper 46 (1991:18-24), usury legislation is divided into “first, second and third generation consumer credit laws”.

### **First-generation consumer credit laws**

“First generation consumer laws” occurred prior to South Africa being a union. The aim of the law was the removal of uncertainty regarding charging interest. During that era, there was no common or statutory law control over the highest finance charge rates that were in place. Amongst the differing colonies, interest rates were dealt with in different ways, and there was no consistency.

Section 1 of Act 6 of 1858 (Natal) stated that individuals and companies were able to borrow at an interest, or premium or discount, that was decided between the person borrowing and the person lending the capital. In 1908, the Natal Act was modified to give the “natives” protection. They were charged a maximum of 15% interest per annum.

### **Second-generation consumer laws**

Grove and Otto (2002) referred to second-generation consumer credit laws because they were applicable on a national level. The Usury Act of 1926 was applicable to moneylending transactions. The NCA introduced interest for loans that was determined by the loan size. For example, loans lower than 10 pounds had an highest interest rate per year of 30%, and loans over 50 pounds had a maximum interest rate

per year of 12%. Contravention of these provisions would result in crime and liability of a fine of 100 pounds at the most.

The Minister of Finance instructed an investigation into the Usury Act of 1926. The committee completed its report, and within a few months, the Limitation and Disclosure of Finance Charges Act was passed, and it had the effect of repealing the Usury Act of 1926; later, it became the Usury Act 73 of 1968. The purpose of the NCA was:

“To provide for the limitation and disclosure of finance charges levied in respect of Money lending transactions, credit transactions and leasing transactions and for Matters incidental thereto; and to repeal the Usury Act” (Usury Act, 1926, p.1).

The Usury Act of 1968 applied to credit, lease and money lending transactions (NCR, 2006, p.22) and was confined to loaning transactions that were below R500 000 and lease agreements that were not below R100 000. This Act was implemented during apartheid, and as a result, there were financial exclusions of the non-white citizens, particularly the black majority of the South African population. In 1992, the Minister of Trade instituted an exemption in the Usury Act. The exemption gave the freedom to charge interest on small loans that were not regulated. The aim of such legislation was to boost borrowing to small businesses. The effect was a boost in the micro-loan sector but not to the intended recipients. The micro-lending sector directed urban, employed persons by segmenting the market and as a result, lower income people were excluded from the banking sector and access to formal credit options (Meager, 2005).

### **Third-generation consumer credit laws**

According to Grove and Otto (2002) the second-generation laws were modernized with the introduction of the third-generation laws. The Credit Agreements Act, 1980

cancelled the Hire-Purchase Act and controlled the contractual aspects of installment sale transactions.

The Credit Agreements Act, 1980 is applicable to specific credit agreements in relation to movable goods. There was little consistency in the transactions that gained protection, whilst the Usury Act of 1968 was more comprehensive. The inconsistency of the statutes created a legal problem because some items were regulated by both statutes, and there were still items that may not have been regulated by either Act. As a result, the applications of the requirements for financial transactions that were inherently very similar were not clear. There were numerous differences in the compliance costs, and standards were applicable to:

- a) *Usury Act and money-lending;*
- b) *Exemption Notice and money-lending;*
- c) *Credit Agreements Act and purchase of goods on credit; and*
- d) *Credit regarding items that were not listed and may not be governed by either law (Meager, 2005).*

It was during mid-1990 that Alec Erwin, the then Minister of Trade and Industry, noted that excessive interest rates were being levied on poor and low income South Africans. The effect was the removal of interest controls without regulatory supervision and credit protections (Meager, 2005).

According to Meager (2005), after five years of discussions, the Microfinance Regulatory Commission (MFRC) was formed in 1999. The MFRC amended the procedure of obtaining exemptions, mainly as a response to concerns over interest rates that were high and abusive practices in the micro-lending market.

The MFRC utilised the usury laws to incentivize ethical conduct and transparency from Microfinance Institutions (MFIs). Micro-lenders who failed to enroll with an

accepted regulatory authority were no longer able to make the grade for an exemption and were required to comply with the strict usury rates (Vermeulen, 1999).

According to Ryan (2005), the result of the MFRC's research was the identification of several problems with the credit legislation, namely:(1) consumer protection that was not effective, specifically for low-income groups; (2) limited credit; (3) high credit costs; and (4) reckless behaviour by some credit providers. There was also additional research that revealed undesirable practices by micro-credit intermediaries, debt administrators and debt collectors.

In 2005, the NCA replaced the Usury Act, the Credit Agreements Act and the Exemption Notice to the Usury Act. The NCA was assented to in 2006 (Government Gazette, 2006). The NCA came into effect in three phases. According to Otto (2006), the NCA was intended as a mechanism that would promote and advance the social and economic welfare of South Africans through the promotion of a fair, transparent, competitive, sustainable, responsible, efficient, effective and accessible credit industry, and provide protection of consumers.

Credit bureaus, consumers, and all providers of credit have had to familiarise themselves with the new NCA. Consumers were given rights and introduced to ways that allowed them to obtain information and make decisions prior to purchasing on credit. Credit providers were also responsible for granting credit to consumers who failed to afford it. Credit bureaus are being regulated based on the manner they do business. Regulations of the NCA stipulate the highest interest rates and transaction fees that are levied on credit agreements or loans.

Temkin (2006) cites the director at Deneys Reitz, Shawn Barnett as saying that the NCA has been based on the beliefs of various market participants that (South Africa's) current credit legislation fails to be effective in addressing the requirements of a complex consumer market.

In response, the NCA has brought about lending laws that require fair transparent pricing, which can be achieved partly through publication of effective rates. To ensure that the lending laws remain transparent, the NCR will screen and regulate the NCA.

## **2.8. The Role of Credit in an Economy**

According to the dti (2003), agreements on credit are important for a person who wishes to get merchandise or a facility they cannot pay for in cash or would rather not pay cash for that item. Credit allows a person to utilise a manufactured product or facility at a cost that is embodied by an interest rate before they pay for the product or service or spread payment over numerous months if it cannot be purchased from only a month's salary. It would be impossible for most people to purchase houses, cars, fridges, beds, radios, television sets and even university education without getting finance.

Although credit can be a useful instrument to acquire products and services that could not be obtainable from one month's salary, the disadvantage is that it may result in a high level of indebtedness. Credit may also result in financial difficulties because people take out loans to service existing loans. Over-indebtedness may also result in absenteeism, demotivation and even theft (the dti, 2003).

## **2.9. Factors That Affect Consumer Behaviour**

There are various factors that have an effect on consumer behaviour. These factors include psychological, personal, and social factors. Psychological factors are perceptions, knowledge, personality, motivation and mental processes. It is the way in which human's analyse and make choices. Attitude may have an effect on human behaviour in three ways, namely,

- a) exploration, and conscious mind movement;

- b) impressions that have an effect on consumer's emotional approach to credit; and
- c) behaviour model (Lejniece, 2011).

Personal factors are subjective to the consumer and the way they reach a decision. These are demographic factors, i.e. nationality, income level, age; and situative factors, i.e. changes in physical conditions of consumers. Finally, social factors are the effect family and friends have on a consumer's decision-making process. Social factors may have an influence on the choices consumers make regarding credit. Consumer behaviour is affected by internal and external factors in considering whether to obtain credit or not (Lejniece, 2011).

## **2.10. What is the NCA?**

The NCA seeks to act as a tool that serves as a guideline of credit that is given to consumers by all credit providers. Allowance is made for the creation of formal bodies such as the NCT and the NCR, which have a crucial role in enforcing the NCA, and granting consumers and credit providers the opportunity to address any contraventions of NCA (Kirsten, 2006).

## **2.11. Purpose of the NCA**

Consumers, particularly those who are illiterate, were subject to exploitation from credit providers as a result of the unequal distribution of power when they engage in credit agreements. Approximately 38% of South Africans are low-income earners, earning between R1500 and R5000 per month (Finscope, 2004). The low-income earners only had access to microfinance. Because of that, micro financiers would exploit this market with overpriced debt, which consumers were not able to afford. The NCA was promulgated with the purpose of furthering the economic and social welfare of South Africans through the promotion of a credit market that is transparent, sustainable and fair.

Below is a discussion that helps one gain an understanding of the objectives of the NCA and its impact on institutions and consumers.

In order for a person to be able to get credit, they need a bank account along with credit history. In Finmark (2003), it was discovered that 37% of Living Standards Measure (LSM) 3-8 segments were partially banked, and 37% were unbanked. These are some of the characteristics of someone who did not have a bank account (Finscope, 2004, p.1, 3; Falkena *et al.*,2004):

- a) no transactional account;
- b) poor education;
- c) reside in township and rural areas;
- d) no constant cash flow; and
- e) 55% do not have a credit history.

The main aim of the NCA is to have one law that applies to credit providers and consumers and protects their interests (the dti “Policy Framework” paragraph 4.7-4.8). The NCA reaches a wider field, especially because it is applicable to credit regardless of the amount as compared to its predecessors, the Usury Act 73 and Credit Agreements Act 75.

Levenstein (2006) states that there are many people in South Africa that have little money but that have been given access to too much credit. This results in over-indebtedness which traps South African in a cycle of debt. The NCA focuses on consumer rights and has few rights for credit providers.

It is the responsibility of the NCR to educate and inform people about the provisions of the NCA. Section 92(1) requires that there be a pre-agreement statement given to the consumer, one that serves as a quotation before a credit agreement of less than R15 000 is entered into. The quotation is valid for a period of five business days; this

is an option created by statute (Otto, 2006). Section 93(1) of the NCA states that it is the credit provider's obligation to furnish the consumer with a copy of the credit agreement. The dti "Policy Framework", chapter 5 considers the fact that consumers need help to make choices. As a result of poor disclosure of the cost of credit and financial implications of the product, it is not always easy for a consumer to make an informed choice. For that reason, information must be simple.

The NCR is tasked with the implementation of the NCA. The NCR supervises the entire consumer credit industry including the MFRC regarding micro-lending. The NCR acts as an independent juristic person that is governed by a board, and the chief executive officer is able to appoint investigators. The responsibilities of the NCR are set out in section 13-18 of the NCA. On 1 September 2006, the NCT was established. It has jurisdiction throughout South Africa. Its function is to adjudicate on matters brought before it on the basis of the NCA. A consumer's debt can be enforced by the court, but only if the consumer has been made aware of the default in payment and a certain amount of time has passed. A complaint may also be referred to the NCR, which would be the beginning of an application to the NCT.

The restricting process occurs in the following process: a court may consider a person to be over-indebted (s85 (b)), or a consumer is referred to a debt counselor (s85 (a)). The consumer is also able to request the debt counselor to declare him/her over-indebted. Therefore, once there is an evaluation by the debt counselor, a consumer may be found to be over-indebted. The debt counselor can then make a recommendation to the Magistrate's Court that the credit agreement should be declared reckless (s86 (7) (c)(i) read with s80), or there can be a rearrangement of the consumer's debt (s86 (7) (c)(ii)). But should the debt counselor not find the consumer to be over-indebted but having difficulties to repay the debt on time, there can be a voluntary agreement of a new repayment plan (s86(7)(b)).



## **2.12. Implementation of the NCA**

It is the NCR that is in charge of the enforcement of the NCA through dispute resolutions between consumer and credit provider, addressing complaints about contraventions, monitoring the credit industry to ensure that any conduct that is contrary to NCA is stopped or prosecuted. The NCT attends to the adjudication of claims and issue fines where necessary (National Credit Act 34 of 2005).

## **2.13. The Guideline for the Cost of Credit within the Microfinance Industry**

According to David (2003), the microfinance industry began in the 1980s with Non-governmental Organization (NGO's) and government departments playing key roles. The industry grew in four phases, namely, pioneer, breakout, consolidation and maturity.

The pioneer phase (1980s to 1994) was made up of non-profit and commercial lenders who propelled microloan products into the industry, as a result of international anticipation over microfinance, to encourage microenterprises to engage the increasing labour and to market the mobile population being separate from the traditional banking credit system.

The breakout phase (1995 to 1999) occurred with the pioneers becoming very successful as a result of the rapid expansion of the micro-lending market. Post 1992, due to the exemption to the Usury Act removing price restrictions on small and shorter-term loans, microcredit was legalised.

In 1997, there were approximately 3500 formal MFIs; the loan volume multiplied from R3.6 billion to R10.1 billion. There was apprehension due to the excessive interest rates and the automatic deductions of loan repayments from bank accounts or salaries from those who borrowed.

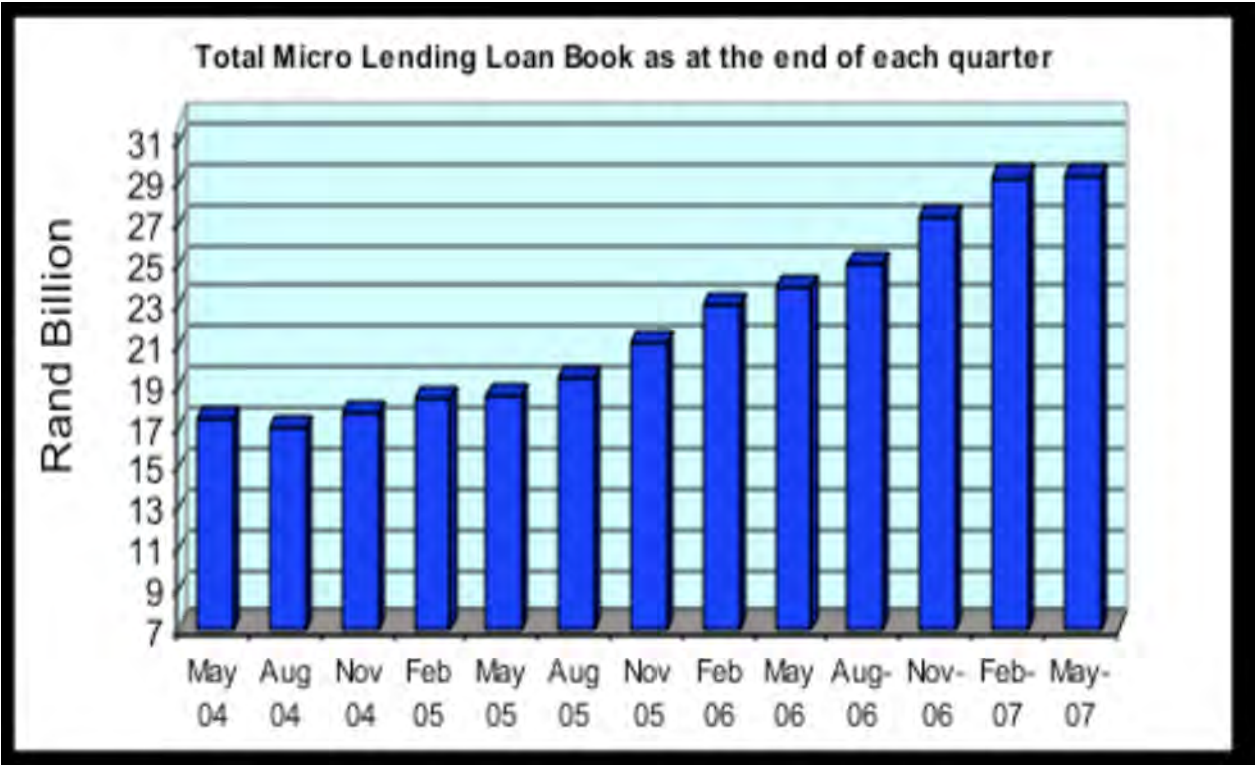
The consolidation phase (2000) meant that microfinance was difficult to sustain due to a few creditworthy borrowers; this resulted in a decrease in profit margins and risk standards and the government making payroll borrowing illegal and establishing the Microfinance Regulatory Council (MFRC) to regulate micro-lending.

The maturity phase is when the industry’s growth rate is sustainable in the long-term and complies with the regulatory framework. This phase has not been reached, but it appears to be imminent. The flow chart by the NCR below in Figure 2.2 depicts 12 months that end in May 2007. The microloan payouts increased by 16%; this is a depiction of a decrease from annual rates of 19% in the previous year.

The NCR has tried to create a credit market that is easily available, with priority being on historically disadvantaged, low-income communities.

Figure 2.2 below depicts the amount of money spent on loans.

**Figure 2.2: Total Micro Lending Loan Book as at the end of each quarter**



Source: National Credit Regulator (2008)

#### **2.14. Consumer Protection of Consumer Credit**

The NCA as a form of credit regulation has attracted various opinions. In the Consumer Protection Bill (2006), the Free Market Foundation of South Africa states that government's intervention to protect consumers is welcome, but it is also of the view that free competition can also create a system where there are greater choices, where prices would decrease, and there would be an increase in wages. Over-regulation can have the effect of crippling growth and increasing costs for consumers.

The regulation of credit needs to be implemented in a manner that seeks to regulate abusive lending practices and grant consumers protection. A study conducted by Blue Financial Services (2007) considered whether there was clarity on consumers' perception or awareness of the NCA and its impact. The findings of the study were that awareness and understanding of the NCA was poor; fifty per cent of the sampled individuals failed to relate on the impact of the NCA on their lives.

#### **2.15. Disclosure Policies**

According to Braunsberger, Lucas and Roach (2004), the changes to the Truth in Lending Act (2004) introduced Regulation Z; this was intended to assist consumers identify and understand cost information. It was found in their study that the Annual Percentage Rate (APR) fails to translate to consumers' processing information. The APR was viewed as a distraction to consumers considering important cost information.

The US Truth and Lending Act, which came prior to the Consumer Credit Protection Act in 1968, was for disclosure of certain information and, as a result, imposed

compliance costs on creditors (Durkin, 2002). The effectiveness of the NCA was questioned regarding consumers' understanding of credit matters.

The NCA imposes on credit grantors to disclose the cost of credit, so that it is easy for a consumer to compare with differing credit grantors. The disclosure of credit is aimed at increasing competition between credit grantors, thereby making credit more accessible to consumers. The NCA does also stipulate the limits of the interest rates charged to consumers.

## 2.16. The Credit Market – Credit Usage, Supply and Demand

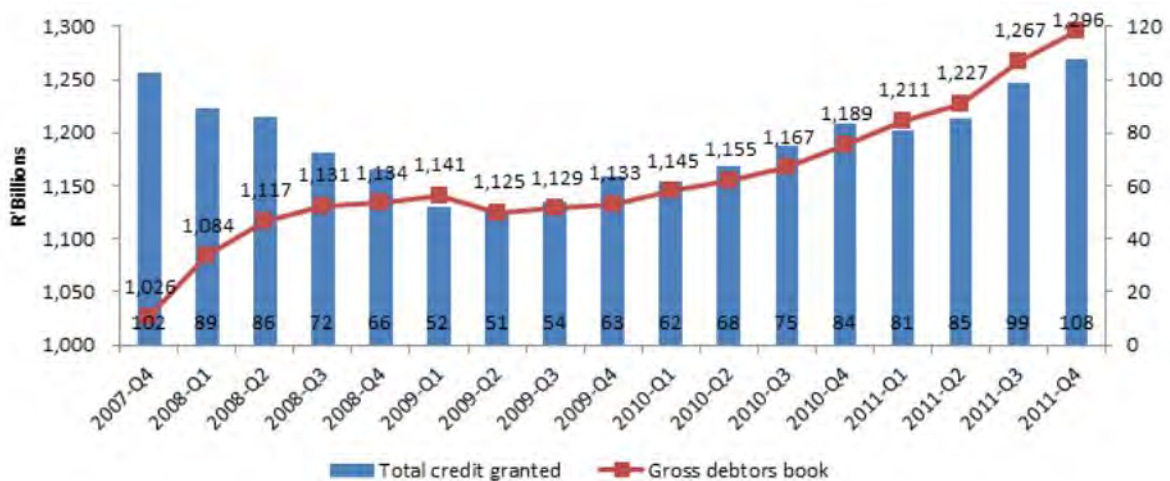
### 2.16.1. Introduction

According to the NCR, the NCA also seeks to increase South Africans' access to finance. The NCA sought to increase access to finance through the creation of a piece of legislation that was inclusive of all members of the South African Economy.

### 2.16.2. Size of credit market

Below is a look at the current market and debt problems faced by South African consumers.

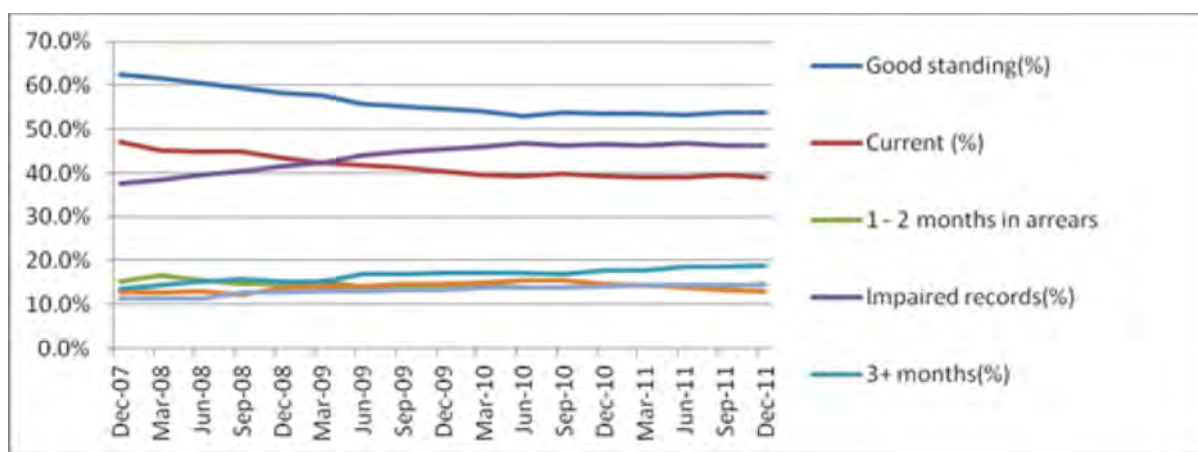
**Figure 2.3: Size of credit market**



Source: National Credit Regulator (2012)

After the inception of the NCA, there was a decline in credit granting in South Africa, which resulted in the market growing. Credit granting in 2011 grew to the same level as in 2007; therefore, there was an increase in the access to credit in the market because, in 2011, the economic conditions were more subdued than in 2007. At the end of 2011, the credit market was R1.3 trillion.

**Figure 2.4: Repayment experience – credit standing of consumers**



Source: National Credit Regulator (2012)

In 2011, there was a decline of loans that had a good standing to 58%; forty per cent of the loans were up-to-date with payments. The balance of 19% was in arrears.

### 2.17. Impact of the NCA on Access

The credit pricing and gaps in the interest rate in the Usury Act (1968) and Credit Agreement Act (1980) were not effective to protect consumers. Consumers were left vulnerable to the costs of credit and exploitation by credit providers. The NCA is a government-intervening tool used to consider the past imbalances and form an effective credit market.

## **2.18. Different Countries' Regulatory Regimes**

### **2.18.1. Introduction**

According to the NCR, the World Bank Africa region's strategy aims at supporting developmental goals towards reducing poverty by increasing the poor's access to sustainable financial services. It is imperative to have affordable instruments for credit, insurance, savings and payment transfers.

### **2.18.2. Nigeria**

Consumer protection in Nigeria is at a developmental stage. The Consumer Protection Council Act No. 66 of 1992 creates a forum where consumers are able to complain and allows for the creation of a council, the Consumer Protection Council (CPC). The council acts as a mediator. The Central Bank of Nigeria has a hand in consumer financial protection, but there is no piece of legislation or regulation on that particular topic (National Credit Regulator, 2007).

### **2.18.3. Ghana**

In Ghana, there is no consumer protection law in existence. There was a strategy for consumer education, and financial literacy in microfinance was instituted in January 2009. The Bank of Ghana has tasked the Investigation and Consumer Reporting Office (ICRO) to protect financial consumers in Ghana. It is the ICRO that gets customer complaints, grievances and petitions.

### **2.18.4. Indonesia**

The legislation that governs consumer protection in Indonesia is the National Consumer Protection Agency (NCPA). Its main aims are to:

- a) create a consumer protection policy;
- b) develop consumer protection NGOs;
- c) educate people about consumer protection; and
- d) attend to consumer complaints.

Indonesia established the Consumer Dispute Settlement Board that has forums which seek to provide a platform for resolution of consumer disputes. The board has the power to impose administrative sanctions.

### **2.19. Consumers' Perceptions Regarding Credit Providers and Their Products**

According to the dti's (2003) credit review, consumers expressed dissatisfaction at the disclosure of the cost of credit, credit products, and the manner in which credit providers view complaints. Regarding disclosure of information, only a small percentage of people read the contract, but there appears to be a limited understanding of the contents of the contract. The contracts also seem to be one-sided, with the rights of the credit providers being given weight above the consumer. This implies two things, namely: (a) there must be an increase in educational advertisement, marketing and brochures, and (b) contracts must not be one-sided.

Consumers also state that when they apply for credit, they are usually desperate to acquire cash and do not spend the required amount of time reading over the contents of the contract. Consumers are usually in a vulnerable position because their credit application can easily be denied as a result of a bad credit record or over-indebtedness (the dti, 2003).

### **2.20. Consumer Attitudes about the NCA**

According to a case study performed by the dti, consumers expressed the view that they lack adequate information of credit contracts and their subsequent rights.

Consumers expressed the view that whenever they were seeking finance, their focus was on obtaining money and not the actual cost of that finance or the contract terms. It is evident that consumers are dissatisfied about the information they receive as to the cost of credit (the dti, 2003).

## **2.21. The NCAs impact on the Prevention of Unfair Credit Practices**

According to Dippenaar (2013), the NCA divides credit agreements into three categories, namely: small (0-R15 000), intermediate (R15 001-R249 999), and large agreements (over R250 000) in order to prevent the granting of reckless credit, to be compliant with the reporting requirements, and to disclose certain information. Prior to a provider of credit signing a credit agreement or increasing credit, the provider of credit is required to ensure that the purchaser is conscious and comprehends the cost and risks of the credit. Consideration is also made of whether a consumer was able to pay back debt in the past, and their current economic means and financial commitments must also be factored in when the credit application is assessed.

A credit provider who has entered into an excess of 100 credit agreements or who has a balance of credit is in excess of R500 000 that is due to him must register with the NCR. Failure of the provider of credit to register will result in credit contracts with the credit provider being prohibited and any cash paid to the provider of credit being payable with interest (Dippenaar, 2013).

Providers of credit are required, according to section 62-68 of the NCA, to submit the following documents:

- a) Compliance report: The report is completed each year and completed six months prior to the provider of credit's financial year end.
- b) Statistical report: The report is completed on recommended form 39.
- c) Annual and Financial Operational Return: Form 60 is to be concluded annually.
- d) Assurance Engagement: Completed within six months of financial year.



- e) Annual Financial Statements: This report must be inclusive of auditors/financial officer's reports, and it must also be done annually half way through the provider of credit's financial year end.

The NCA is at heart a piece of legislation that was drafted to protect the consumer because the credit provider's rights outweigh the rights of the consumers. Consumers are now able to enforce the rights contained in the NCA. The researcher's opinion is that consumers are not aware of the purpose of the NCA and the potentially complex process of debt collection as well as the purpose of the NCR, that seeks to standardize the implementation of consumers' rights.

## **2.22. Challenges of the NCA**

The NCA sets up objectives to make the credit industry open, fair and responsible. The main theme that is in the objectives of the NCA is to provide consumers with protection. These objectives have cost implications for banks, credit providers and the government. An article in the Business Day states that analysts place the cost for bank compliance at R2 billion per annum (Nyamakanga, 2007).

South African banks have been required to train their staff to comply with the NCA, amend their procedures, and align their charges to the NCA requirements. The banks were left with the task of conveying to consumers the impact of the NCA regarding their ability to access credit. The NCA requirement has resulted in the following changes:

- a) Market share (new markets were created for banks, but credit growth was restricted).
- b) Credit granting policies (there is scrutiny regarding why credit was granted).
- c) Reporting and monitoring (compliance reports).
- d) Collection processes (debt counseling procedure).

A big challenge that the banks have to address is the risk of engaging in a reckless lending agreement with consumers. Section 81 states that credit providers must refrain from concluding reckless agreements with consumers. It is the obligation of the credit provider, prior to engaging in the credit agreement, to take reasonable measures to ascertain the consumer's understanding of the risks and cost of credit, the consumer's ability to repay debt in the past, and the current financial circumstances of the consumer. The credit agreement is considered to be reckless if the following occurred:

- a) On conclusion of the credit agreement, the bank did not conduct the required assessment; or
- b) The agreement was entered into regardless of information that indicated that the consumer did not have an understanding of the risk and costs of the agreement or the agreement would result in the consumer being over-indebted (Davel, 2008).

Failure of the bank to comply with the NCA and to engage in a reckless agreement has the consequences of the agreement being set aside, and that can result in a financial loss for banks or damage the goodwill of the bank.

A consequence of the NCA for consumers is that credit grantors scrutinize their application and can be reluctant to grant credit; as a result, there will be less people who can access credit.

Local and international community's supported South Africa's financial regulation policies, and they were viewed as effective. In the United States, the sub-prime crisis has created the requirement for debt counseling, to assist consumers to manage debt stress. Numerous countries throughout the world are leaning towards preventative measures in the NCA, for example, rules on reckless lending (Davel, 2008).

### 2.23. Access to legal assistance to address unfair acts of businesses

According to Woker (2011), an adjudicative body that has been established by the NCA is the NCT. The NCT seeks to establish whether any prohibited conduct in terms of NCA has occurred, enforce the NCA and address any credit providers that have gone against the NCA. The NCT offer an affordable alternative to civil courts because in certain instance such as consent orders NCT has jurisdiction to deal with such matters.

### **2.24. Conclusion**

The NCA was implemented to correct the imbalances of power amid the consumer and the credit provider. It appears to have afforded consumers protection by taking into consideration each consumer's financial circumstances before granting them credit and acting as a watchdog over credit providers. This chapter mentioned the way credit legislation has evolved over the years, the importance of credit to the economy and the effects, and the impact and challenges of the NCA.

## **CHAPTER THREE – RESEARCH METHODOLOGY**

### **3.1. Introduction**

This chapter deals with the research methodology used in this study to determine perceptions of the NCA. The study utilizes qualitative research in order to access rich data. The research design methods are elaborated on in order to gain clarity on the process that the researched engaged in to obtain data.

### **3.2. Qualitative and Quantitative Research**

Quantitative research is numerically orientated. Data collected in quantitative research is – regardless of its original form – adapted into numbers in order to easily interpret and statistically analyse. The main advantage of the quantitative approach is that it is easy to work with numbers, and the data is readily collected, coded, summarised and analysed. A researcher is able to utilise one set of data to draw an inference on the characteristics of other similar populations. The disadvantage of quantitative research is that researchers gain a great deal of knowledge about collective or average experience of the research participant but lack insight into their individual experiences (Dunn, 2010).

Qualitative research is reliant on verbal reports, descriptions and interpretations of proceedings. Qualitative data is not numerical nor is it subjected to traditional methods of analysis. A benefit of the qualitative approach is that it is an open system because it does not limit the ambit of the answers given; it utilises and discloses the richness of the human experience. Studying the way people respond to a given stimulus can be fascinating, because it makes one think and is eye-opening due to there being no “right” way to interpret it. The open nature of qualitative research is useful when it comes to generating a hypothesis, when investigating a topic. A disadvantage of qualitative research is that it cannot be easily or quickly summarised, nor can it generalise qualitative observations to other situations (Dunn, 2010).

Qualitative research allows the researcher to discover the feelings and emotions behind words in a manner that is not possible with a quantitative method. Respondents' comments that are based on one's personal experiences cannot be easily investigated; the factors that affect thoughts and emotions are not revealed in a questionnaire. Accordingly, qualitative data collected through interviews act as a vehicle to gain rich data that quantitative methods cannot provide.

The research is based on the qualitative approach, and data was collected using semi-structured interviews. This enabled the researcher to discover the factors that influence the respondents' perceptions of the NCA.

### **3.3. Research Philosophy and Approach**

The research philosophy can be divided into three main areas (namely, interpretivism, positivism, and realism), but it is rare to find research that can be placed in just one of these areas.

Interpretivism aims to gain an understanding of the subjective reality of the people being studied in order to gain an understanding of their actions, motives and intentions in a way that will be meaningful to the research participants (Saunders, Lewis & Thornhill, 2003).

Positivism can be compared to a natural scientist that makes law-like observations and generalisations. The researcher takes on the role of an objective analyst who utilises structured and replicable methodology that requires statistical analysis (Saunders *et al.*, 2003).

Realism means that reality exists independent to human beliefs and thoughts. Realism identifies the significance of understanding people's socially construed interpretations and meaning whilst still trying to comprehend broader social forces,

structures or processes that can affect and constrain people's views and behaviours (Saunders *et al.*, 2003).

The philosophical position that was accepted in this research is a combination of interpretivism combined with realism.

The hypothetic-deductive method which is mainly used in quantitative research is a scientific method that utilises a step-by-step logical method to discover a solution to a problem. The hypothetic-deductive method popularised by Austrian philosopher Karl Popper is a useful systematic way to solve basic and managerial problems. This method is made up of seven steps of identifying a broad problem, defining the problem statement, hypothesising, determining measures, data collection, data analysis, and interpretation of results. A key to the hypothetic-deductive method is deductive reasoning, which is a general theory that can be applied to a specific case. Inductive reasoning works in the opposite direction, whereby a specific phenomenon is observed and based on a conclusion that is reached (Sekaran & Bougie, 2010).

### **3.4. Research Design and Methods**

#### **3.4.1. Sampling and Sample Size**

Purposive sampling is gathering information from targeted groups instead of where it is conveniently available. The sampling is confined to types of people who are able to provide the required information. There are two types of purposive sampling: judgment and quota sampling. Judgment sampling is selecting the best positioned subjects to supply the information, which is the type of sampling that will be used in this research (Sekaran & Bougie, 2010).

In this study, there was a combination of participants interviewed that were knowledgeable about the NCA and its application. The focus is not on expertise about

the NCA per se but on people that have had practical dealings with the NCA and their subsequent perceptions.

The sample was made up of credit providers (who are frontline employees who deal directly with customers). The respondents of the interviews were made up of six Woolworths Hillcrest employees, the Manager of Customer Services at Woolworths Hillcrest, and the Deputy Director Consumer, Competition Law and Policy at the dti (who has been working with the Consumer Protection Act (CPA) and the NCA in the course and scope of his employment).

The interviews were recorded and transcribed, and the written record was sent to the interviewees for their input.

Eight respondents, which will be referred to as ( R ) in the next chapter to protect their identity, were interviewed, and an analysis per category is detailed below.

Table 3.1 below explains the categories of people that were chosen to partake in the study.

<b>CATEGORY</b>	<b>TOTAL</b>
Woolworths employees and Manager	7
Deputy Director Consumer, Competition Law and Policy at the dti	1
<b>TOTAL</b>	<b>8</b>

**Table 3.1: Details of respondents**

Source: Compiled by the researcher

The Table above explains the type of employment of the respondents and the number of respondents that were interviewed.

Prior to being able to go out into the field and interviewing the respondents, the researcher had to obtain ethical clearance approval (Appendix3)from the University. Before conducting an interview, respondents were first presented with the informed consent form (Appendix2)assuring them of confidentiality and anonymity.



### **3.4.2. Data Collection**

Data may be collected using primary or secondary sources. Primary data is information that is collected by the researcher, whilst secondary data is collected from existing sources (Sekaran & Bougie, 2010).

Primary data can be collected in various ways, for example, from the field or lab. Data collection methods can be in the form of interviews – telephonic interviews, face-to-face interviews, or interviews via electronic media; questionnaires administered personally or electronically; and observing individuals, either directly or by video recording them. Observing individuals or events, groups of events, and various motivational techniques such as a projective test can be used (Sekaran & Bougie, 2010).

Interviews are a great advantage because they are flexible and can be adapted and the questions changed as the researcher conducts interviews. Questionnaires are also an advantage because data is collected efficiently in terms of time and cost to the researcher (Sekaran & Bougie, 2010).

### **3.4.3. Semi-Structured Interviews**

An interview is when a respondent speaks and the interviewer records the answers (Dunn, 2010).

According to Dunn (2010), interviews can be divided into five main categories:

- a) Structured interviews.
- b) Semi-structured interviews.
- c) Non-directive interviews.
- d) Focused interviews.
- e) Informal conversational interviews.

The interview approach is dependent on the goal and objectives of the research. Semi-structured interviews can be utilised in the collection of qualitative data. Although there are questions that guide the interview, it does not mean that all the questions must be covered. Questions may be incorporated into the interview, and responses are documented by videoing, tape recording or writing down notes (Gray, 2004).

A great advantage of semi-structured interviews is that there is a lot of flexibility because the interviewee can supply additional information and insight. This serves an advantage to the researcher, who can gain valuable information, which the interviewee may have through hands-on experience or knowledge.

A semi-structured interview approach was utilised in the study, as the subject matter could be viewed as complex. Interview questions (Appendix 1) were devised with the aim of guiding the interviewees to reveal information for the research objectives. Although a large portion of the information has been gained by the researcher, the flexibility of the semi-structured interviews allows for data to be gained from the respondents, which can prove useful to the study.

#### **3.4.4. Feedback on Interviews**

The interviewees were chosen carefully in this study. They had to be knowledgeable about credit, dealt closely with the NCA and with customers who wanted to obtain credit. The study mainly focused on Woolworths Hillcrest employees. The dti employee was interviewed in order to ascertain the NCA from the perspective of the drafters and custodian of the NCA. The interviews were conducted face-to-face and lasted on average 30 minutes.

The main difficulty was managing to arrange times to interview respondents, as most appeared willing, but when it came to fulfilling their commitments, they were busy. Leonard (2003) notes that face-to-face interviews have their disadvantages. It can be

time-consuming to transcribe and analyse transcripts. Although interviewers try to be unbiased in their recording of the information, there can still be expectations regarding interviewee's feelings, beliefs or background, which may have an impact on the interview. Interviewees may also be influenced by the interviewer, for example, based on their age, race, and appearance, and may give responses they believe the interviewer would prefer to hear.

#### **3.4.5. Research Instrument Design**

A semi-structured interview is based on a set of questions. This study utilized open-ended questions during the interviews because they allowed the participants to respond in any way they chose and to encourage an extensive and developmental answer (Sekaran & Bougie, 2010).

In contrast, with closed-ended questions, the respondents must choose between alternatives given by the researcher. The answers are usually "yes" or "no" (Sekaran & Bougie, 2010).

Interview questions should not focus on the following: jargon, ambiguity, leading questions, double-barreled questions, or attempts at probing personal or sensitive issues (Gray, 2004).

The funneling technique was also utilised by the researcher in this study. The funneling technique begins an interview by asking open-ended questions in order to get a general understanding of a situation. It is from these responses to the broad questions that more focused questions may be asked by the researcher (Sekaran & Bougie, 2010).

### **3.5. Construction of the Instrument: The Interview Questions**

The semi-structured interview questions were constructed after carefully examining the literature. The following questions were set:

- a) Could you please provide a brief background of your experience in the credit industry?
- b) Do you think that consumers understand the purpose/benefit of the National Credit Act? Explain the reason for your answer.
- c) What are the broad categories of factors influencing credit being granted to a consumer?
- d) Do you think consumers and/or credit providers view the National Credit Act as beneficial?
- e) Are there factors influencing the credit industry that are unique to South Africa?
- f) What factors will only be experienced in South Africa?
- g) Do you think consumers and/or credit providers understand the National Credit Act and its impact?
- h) Do you think the National Credit Act provides sufficient protection to consumers?

Probing questions were also directed to the interviewees. The researcher, for example, enquired about the day-to-day experience at Woolworths, why customers

were not granted credit, why African customers were less knowledgeable about credit, and the consequences of being over indebted.

### **3.6. Data Analysis**

Qualitative data is data that is in the form of words. Examples include interview notes, answers to open-ended questions, news articles, and many others. Analysis of qualitative data seeks to make valid inferences from data collected.

According to Miles and Huberman (1994, cited in Sekaran & Bougie, 2010), there are three steps in qualitative data analysis:

- a) Data reduction: a process of selecting, coding and categorising data.
- b) Data display: ways of presenting data.
- c) Drawing conclusions: answer research questions.

To obtain data, the interviewer must have a good understanding of the interviewee, express non-judgment, and display good listening skills. Qualitative data analysis was used to obtain information from participants, with their focus being on the experiences and meanings given. Direct quotes may also be used to extract the most meaning. The theory emerges from the categories used by the participants prior to the interviewer creating his or her own categories (Reason & Rawlings, 1981).

The first thing when it comes to the interview process is to gather data from the participants and transcribe it. Then the information is arranged into groups. The next step is to consider the categories suggested by respondents. Finally, the interviewer establishes categories using the information received from prior steps. The focus of qualitative investigators is the various meaning and interpretation in each category; for example, with a study on the attitude of A-level psychology, their statements placed them in a category of being negative about statistics. Considering numerous statements may reveal reasons why A-level psychology students dislike statistics. In

reporting findings, direct quotes may be used as well as data analysed using the categories (Reason & Rawlings, 1981).

### **3.6.1 Validity and Reliability**

Conclusions reached from qualitative data must be reliable, plausible and valid. In semi-structured interviews, there can be numerous data quality concerns (Dunn, 2010).

Bias is an issue that affects the reliability of data. Bias from the interviewer can be presented by comments or body language, which can result in the interviewee being influenced to respond in a particular manner. The interviewer is able to enforce their own views in the manner questions are asked (Saunders *et al.*, 2003).

Validity refers to the extent to which research results are accurately represented by the collected data and transferred to other contexts. Two methods have been advanced to ensure there is validity of qualitative data; these are:

- a) Including the representativeness of cases and including cases that may be contrary to theory (Sekaran & Bougie, 2010).
- b) The following measures were taken in an effort to overcome bias.

### **3.6.2. Preparation and Readiness for the Interview**

Most of the literature review was completed when the interviews were conducted. This resulted in the researcher having background information that would be beneficial when conducting the interviews. According to Healey and Rawlinson (cited in Saunders *et al.*, 2003), an interviewer is able to assess whether the information received in an interview is accurate or not.

### **3.6.3. Approach to Questioning**

The questions should be clear with a neutral tone. Probing questions must be worded carefully to ensure the interviewee is not being guided to adopt the views of the interviewer (Saunders *et al.*, 2003).

### **3.6.4. Cultural Differences and Bias**

Cultural differences can result in misrepresentation, which occurs when using other types of data collection methods. The benefit of interviews is that any misunderstandings can be resolved (Saunders *et al.*, 2003).

## **3.7. Research Limitations**

Despite numerous attempts to interview the credit regulator, the researcher was unable to do so. Time and availability of respondents was a major factor for the research; some Woolworths staff made undertaking to avail themselves for the interview but in the end were unable to participate due to other commitments.

Another limitation of this study is the difficulty that can be experienced with qualitative research in how data from interviews is subjective. In spite of that, Coolican (1994) mentions that there are ways to show that the data is reliable – by comparing an

interview study with an observational study. Another method is to have two qualitative researchers engaging in independent analysis of the same piece of data drawing a comparison.

### **3.8. Conclusion**

This chapter dealt with the methodological approach, qualitative research, which was utilized in this study. The use of semi-structured interviews was the most effective way to gain access to information from the interviewee and answer the question of how do people perceive NCA. The next chapter will present the results and discussion of the study.



## CHAPTER FOUR– RESULTS AND DISCUSSION

### 4.1. Introduction

The previous chapter discussed the qualitative research approach, and elaborated on data collection and data analysis. Semi-structured interviews were used to gather data from the respondents. This chapter presents the analysis and discussion of the results.

### 4.2. Theme 1

#### 4.2.1. Consumer Understanding

The majority of the respondents held the view that consumers lack understanding of the NCA.

*... this Act was introduced to protect both concerned parties (the financial service provider and the consumer/target market) from an unsecured financial relationship.(R3)*

According to the expert on consumer law who was interviewed, consumers fail to understand the NCA. He believes that the level of understanding of the NCA is based on their level of literacy. He has the perception that people with a high level of literacy understand the NCA, its obligations and implications, but may manipulate it. On the other hand, people with lower literacy levels hold the belief that they should easily access credit regardless of their financial position, but they fail to have an understanding of their obligation.

The expert on consumer law also believes that consumers do not understand the impact of the NCA. He raised the example that consumers are frustrated when they apply for higher amounts and receive a lower amount. They lack understanding as to

why they obtain lower amounts than they applied for. From the side of the credit providers, credit providers seem to have a greater understanding of the NCA.

*Credit providers understand that the extension of credit is a mandate of government, and it must be fulfilled in terms of the NCA... (R3)*

According to a consumer survey by the Consumer Federation of America (CFA), it was found that consumers lacked the requisite knowledge (Brobeck, 2008). A failure to understand the NCA has negative implications on consumer awareness and understanding. The NCA was enacted to regulate credit within South Africa and seeks to protect consumers from the unequal bargaining power of credit providers. Porteous (2004) maintains that, prior to the NCA being implemented in South Africa, the consumer regulation system was disjointed as a result of legislation that failed to protect consumers.

#### **4.2.2. Consumer Awareness and Knowledge**

It became evident from the interviews that there were many consumers who lacked understanding of the NCA. On that account, it becomes difficult for consumers to reap the benefits of an Act which they do not understand.

*NCA has not done much for our customers because there are people who do not understand it and its purpose... (R2)*

The purpose of the NCA is to provide protection for consumers through the integration of numerous pieces of credit legislation and, thus, to facilitate a credit market that is fair, efficient and transparent. The NCA also seeks to balance out the power of credit providers.

The comments of the respondents reinforce the purpose of NCA. The respondents seemed to all hold the view that the NCA creates a uniform platform for consumers.

The responses of consumers portray a picture of there not being enough awareness of the NCA. According to Blue Financial Services (2007), to gain an understanding of consumers' perceptions, knowledge and understanding of the impact of the NCA on consumers lives is needed. The study revealed that awareness was low, and that the understanding of the NCA was not good, with approximately 50% of those sampled failing to relate to the NCA and any impact it may have on their lives.

The NCA places the onus on the credit provider to disclose the cost of credit. The consequence of access to information is that consumers will be able to compare credit costs. Low consumer awareness of the NCA makes it difficult for consumers to compare credit costs. Braunsberger *et al.* (2004) state that, when the variable APR is highlighted in credit card applications, it does not necessarily result in consumers processing information better. Rather, it has a negative effect of distracting consumers from paying close attention to the cost of credit.

According to Durkin (2002), the Truth in Lending Act of 1968 in the United States of America found that consumers have a greater understanding of credit agreements, but consumers in America had the benefit of education, credit being frequently used, and advertisements about credit. However, there are still incidences of practices wherein abuse by credit providers is still occurring, and there is still a need to improve education and enforcement against illegal acts.

It was revealed in this study that the majority of respondents felt that South Africans lack awareness and knowledge on credit use or education. People still base their views of credit according to what they have experienced personally in the process of obtaining credit. It becomes clear that credit markets need to have financial literacy about credit and their rights in the event that illegal practices occur.

### 4.2.3. Consumer History

The next theme that emerged was that of consumer's history and the impact that it has on a person obtaining credit.

*Credit providers do not view the NCA as beneficial because a person is denied credit due to their history, and consideration of their current financial status is not considered. (R5)*

The role of the consumer's history in obtaining credit was mentioned by respondents. One of the requirements of the NCA is to prevent reckless lending. In order to satisfy this requirement of a consumer's history, when a consumer applies for credit from a bank or retail agent, the information is sent to the relevant credit bureau. The credit bureau is then tasked with matching the consumer's name, their address, identity number, and other personal details to the credit application with the information that is stored on credit bureau files (Williams, 2009).

The information about a consumer's history is utilized by banks and retail agents in order to establish whether an individual is creditworthy, and whether the individual is able to repay the debt. It is possible to see whether a person is willing to repay their debt by looking at how timeously past repayments were made to credit providers. The focus of lenders would be on whether a consumer paid obligations on a regular basis. There have been debates as to whether consumer reports were accurate and can be viewed as beneficial.

The introduction of the NCA makes credit history is crucial; nevertheless, it is also relevant to note that consumers need to have access to information if their credit applications were rejected as to the reasons and have tips that will give consumers the opportunity to improve their credit rating so that they can receive credit in the future. The NCA provides that consumers have the right to be furnished with reasons as to why their application was not accepted.

#### 4.2.4. Factors Affecting Credit Being Granted

Another theme was that there were factors affecting credit being granted.

*Rating on Transunion Credit Bureau and the ability to pay credit timeously are factors that affect whether a consumer is granted credit or not. Consumers who qualify for credit cards are able to access facilities that will make their lives more convenient...*

(R1)

According to Knowler (2013), the following are key factors that affect whether credit is granted or not:

- a) Account payment history: whether accounts are well managed and whether the entire installment is paid timeously.
- b) Amount of debt: exactly how much is owed and how much of the credit is actually getting used.
- c) Negative information: information that the public can access, such as judgments or bankruptcies that act as an indication of failure to repay one's debt.
- d) Credit history length: the period of time the accounts have been open.

According to McKinnon (2010), the largest portion of one's credit history is based on one's credit score – that is about 35%. If a consumer's repayments are made timeously, then the score should be good. Even so, a single late payment can have a negative effect on one's score. Another factor that is considered is the length of the credit history – a longer credit record is better than a shorter one. This means that the consumer is able to handle credit and debt over a longer period of time and is financially stable. This ability on the consumer's part works out to be 15% of the consumer's credit score. The type of credit also impacts scores, with a weight of about 10%; therefore, credit needs to be a combination of both installments and

revolving credit. Finally, the frequency that one applies for credit has an effect of 10%; when a company performs a credit check, one's score is negatively affected.

#### **4.2.5. Historical Factors Influencing Credit Industry**

Historical factors emerged as a theme that had an effect on the credit industry.

*Previously, pre 1994, there was not a black middle class due to apartheid. For example there was "credit redlining"; if you were from a township you were denied credit... (R3)*

A few of the respondents stated that apartheid played a large role in the current state of the credit industry. They elaborated by saying that, as a result of Africans having restriction to the types of employment they could have, their income was also limited. The expert on consumer law also felt that South Africans' past had an influence on their credit potential. As a result, Africans rely on credit in order to be able to provide their families with necessities.

A sub-theme that emerged was that of culture. South Africa is a country rich in culture and heritage. It emerged that culture played a role in consumer attitude towards credit. Culture is defined as "something that is shared by all or almost all members of some social group. It is something that older members of the group try to pass on to the younger members. Something (as in the case of morals, laws and customs) that shapes behaviour, or ...structures one's perception of the world." (Adler, 1997, pp.15).

Culture can affect people's attitudes, values and behaviour. Culture is enshrined in people's everyday lives, including the values that the society lives by. Roos (1986) views culture as a system in which people live their lives.

According to Adler (1997, pp.15-16), whether it is values, culture, behaviour or attitude, they all have an effect on one another. Values refer to factors – whether explicit or implicit – that have an effect on the choices people make. Values that a person has can also be unconscious, not just conscious. It can be said that the research found that values people have are based on people's culture and upbringing.

The results indicated that respondents felt that African customers do not understand the NCA. This is because they do not appear to understand the interest rates; to African customers, interest rates are a new concept. Respondents were of the view that Africans do not view the NCA as a mechanism to protect them from debt. They view it as a system that forces them to pay back debt regardless of whether they can afford it.

Respondents were however of the view that white customers in contrast appeared to have access to information, and they understood the implications of getting credit; hence, their interaction with credit was different. White customers, according to respondents, appeared to be more cautious about making repayments timeously as they understood the consequences of failure to do so.

Based on the responses, it appeared that the different cultures had a certain view or understanding of the NCA. Certain cultural groups were identified as lacking in knowledge or understanding of the NCA. For that reason, the NCA and its implications could easily be misunderstood or not recognised. The research also highlighted that the understanding or lack of understanding could have negative consequences for some because those who are denied credit in terms of the NCA could resort to loan sharks that offer credit at a higher cost but that do not check the affordability of a person.

It emerged from the study that people view credit differently and one factor that can make people view it differently is a person's attitude, therefore, certain cultures could

lack the requisite understanding of credit and the implications when it comes to failure to repay debt. The NCA seeks to afford all cultures with protection and education of credit, especially because it affects consumers in one way or another.

#### **4.2.6. Cycle of Poverty**

Cycle of poverty emerged because consumers acquire credit not just to purchase luxuries but to be able to afford necessities and as a result they get entangled in a cycle of poverty.

*As a person from a disadvantaged background I have found that there is a lot of access to credit but at very high interest rates. We do not understand the terms and conditions of the contracts we sign or the consequences... (R1)*

Differences in patterns of spending, due to low and high incomes, were detected. According to Mazibuko *et al.* (2010), lower income people tend to borrow from micro-lenders as a way of supplementing lower income (as was also found in this research). The borrowed money is utilised to obtain consumable goods. This results in month-to-month borrowing, and as a result, consumers end up having difficulties to repay the loans. The effect of such borrowing is a debt trap, where poor people borrow money in order to have access to necessities such as food, education, electricity and rent.

The middleclass, on the other hand, borrow money to purchase houses, vehicles, clothes, and other goods. One reason behind the borrowing is to purchase “luxuries”, and as a result, it appears that South Africans do not have a culture of saving. This point was stressed by Mboweni (2007) when he addressed the Monetary Policy Committee Meeting. He stated that South Africans do not have a saving culture, which is evident from the low savings rate, and people do not mind to borrow against the income that they will only earn in the future.



#### 4.2.7. Effects of Credit Attitude on Consumers

An underlying theme that emerged from the interviews was that of a consumer's attitude towards credit.

*...consumers do not understand ... the impact on consumer indebtedness, ...all they want is to access credit...(R3)*

According to Chien and Devaney (2005), studies have shown that there has been a dramatic increase in credit use in Americans from 1980 as a result of changes in their attitudes towards credit. The change in attitude implies that consumers utilise their credit to finance consumption. Kinsey and McAlister (1981) believe that having knowledge of the risks and benefits of using credit may be the reason why people are using more credit. The preference of a consumer is not always linked to his choice. For example, although a consumer may want to borrow money, they may be declined due to lower incomes or even as a result of over-indebtedness.

Attitude about credit is also related to demographic and economic factors; there is a possibility that attitude intercedes the effects of economic and demographic factors regarding credit use. For example, high-income earners could have a favourable attitude about using credit because they do not have too much credit limitations as they can repay their debt, unlike lower-income earners. Therefore, a consumer's credit attitude can be affected by economic and demographic characteristics. If that is the case, can attitude be considered a unique factor that affects the use of credit when economic and demographic factors are removed?

The respondents in this study appeared to indicate that the attitude towards credit affects the way people go about obtaining it. Woolworths' respondents stated that lower-income groups were not worried about understanding the NCA, but rather, that they needed the credit. They were also more susceptible to being blacklisted by the credit bureau as a result of failure to repay their debt. The high-income groups were

viewed as having access to knowledge of NCA. On that account, although they would also access credit, they would be more cautious to repay their debt.

## **4.3. Theme 2**

### **4.3.1. Consumer Protection**

The theme of consumer protection was evident because it was clear to some of the respondents that the NCA was enacted to protect all consumers.

*NCA seeks to protect consumers from unscrupulous lenders, the cost of finance etc., but due to people's personal circumstances, people who are desperate for credit will do anything to get a hold of some cash to provide food for their families...(R4)*

One of the main purposes of the NCA is to provide protection to consumers. The Government Gazette (2006), states that the goal of the NCA is to provide protection and prevent consumers from being taken advantage of through over-indebtedness and reckless lending.

The NCA can be seen as having seven goals that benefit consumers. These are protection from exploitation and reckless lending; disclosure as to the cost of finance; limitation as to the amount of interest that can be charged; education of consumers about their rights; remedies for consumers; regulation of the credit environment by making contracts unenforceable if lenders have failed to register with the NCR.

The expert on consumer law believes that there is a general perception from credit providers and consumers that the NCA works. He gave the example of debt counseling, which was not there in the previous credit legislation. Debt counseling helps consumers who are indebted, as arrangements can be made regarding repayment of debts. Once the debt is repaid, a person can be reabsorbed back into the credit market.

According to a Woolworths employee that was interviewed:

*...NCA fails to provide consumers with sufficient protection;... because how can people feel the protection of an Act they do not understand?(R3)*

Another respondent made the following comment regarding protection of the NCA:

*...On the terms and conditions of credit, there is not a proper explanation so people are still not exposed and lack understanding. NCA fails to protect people because how can it protect them if they do not even know it...(R2)*

Another respondent believes that the NCA provides protection to consumers. He gave examples of sections of the NCA that provide protection such as section 86 on debt counselling, regulation of credit providers by the NCA, registration of credit bureau, and registration of debt counsellors.

He noted that:

*...The current amendments wish to increase protection to consumers through implementation of affordability assessment guidelines. Credit providers will have to comply with guidelines before they are granted credit... (R3)*

He went on to further state:

*...The current amendment (to NCA) is trying to increase the power of the National Credit Regulator in terms of deregistration of credit providers that are not compliant with the NCA. Adverse credit listing rules (section 70(2)) prior to blacklisting credit providers will have to comply with these rules... (R3)*

### 4.3.2. The Impact of the NCA on Consumer Indebtedness

The theme of whether there was an impact on consumer indebtedness or not emerged especially because the Act seeks to balance the unequal power between the credit provider and the consumer.

*Consumers do not understand the impact and think it is too strict because they are given less credit due to existing credit... (R2)*

The respondents appeared divided as to whether the NCA can have an impact on consumer indebtedness. A respondent made the point that consumers were focused on having a better lifestyle. As a result, they continued to take out credit, especially as the economy grows and people earn more and more; thus, consumers get stuck in a cycle of indebtedness regardless of the NCA.

However, another respondent made mention of the fact that:

*...Credit providers understand that extension of credit is a mandate of the government; however, they are aware that there should not be reckless lending because that will cripple the economy... (R3)*

It may still be too early to ascertain what the impact of the NCA is. It is a reality that, due to it being harder and harder to get credit, consumers may still turn to lenders that are not registered, i.e. those who could charge exorbitant interest and cause them to be stuck in debt. The respondents seemed to hold the view that lower-income groups lacked understanding of the NCA and the way it impacted them; subsequently, it was not likely that there would be any changes regarding the way they acted towards credit or viewed the NCA. It appears that consumers will continue to seek credit when they need it, perhaps to supplement income or if there is an emergency. The respondents acknowledge that consumers with lower incomes were most likely not to save for long-term for things such as houses and retirement. The

belief is that consumers who are informed create efficient and competitive markets because, when consumers have knowledge, they can make choices that satisfy their goals.

#### **4.3.3. Measures in the NCA That Will Impact on Consumer Spending and Consumer Debt Burden**

What became evident from respondents was that consumers lacked knowledge and understanding about credit and the cost of credit. A way of providing protection to consumers, was to ensure that prior to consumers entering into a contract, that consumers should have access to information that will allow them to make informed decisions.

*It is crucial for consumers to have an understanding of the NCA for the language in the credit agreement must be in simple language... (R7)*

Consumer credit legislation seeks to address the imbalance between credit providers and consumers by making it compulsory for credit providers to disclose a consumer's obligation. The NCA seeks to achieve its purpose by placing the onus on credit providers to amend the business model and their credit agreement.

The NCA sets out consumers' rights to get information that is in an understandable or plain language. Although other laws such as the Financial Advisory and Intermediary Services Act (2002) have also placed the requirement that information must be in plain language, the NCA pioneers this by defining plain language. Section 64 of the NCA states:

“(1) The producer of a document that is required to be delivered to a consumer in terms of this Act must provide that document-

(a) in the prescribed form, if any, for that document; or

(b) in plain language, if no form has been prescribed for that document.

(2) For the purposes of this Act, a document is in plain language if it is reasonable to conclude that an ordinary consumer of the class of persons for whom the document is intended, with average literacy skills and minimal credit experience, could be expected to understand the content, significance, and import of the document without undue effort, having regard to-

- (a) the context, comprehensiveness and consistency of the document;
- (b) the organisation, form and style of the document;
- (c) the vocabulary, usage and sentence structure of the text; and
- (d) the use of any illustrations, examples, headings, or other aids to reading and understanding.” (Section 64, p.95).

According to Burt who cited Frances Gordon, co-founder of plain language training and consultancy company, plain language is not just about the words, but also, a new borrower needs to be able to understand the purpose of a document (Burt, 2007).

The definition of plain language also makes note of comprehensiveness. The borrower needs to be given information that will allow him to make an informed decision regarding initiation fees, interest, principal debt, and other relevant matters. Gordon believes that to be in accordance with the definition, businesses may have to do user testing. Section 81 of the NCA has a requirement for credit providers to assess whether the borrower understands the risks and costs and their rights and obligations in the contract (Burt, 2007).

#### **4.3.4. Credit Marketing and Advertising**

Credit marketing and advertising emerged as a theme as it plays a role in consumers seeking credit and providing clarity on any grey areas about credit.

*Advertising is a great medium that can assist credit providers understand how beneficial the NCA really is. Advertising can provide consumers with answers to their questions and clarity... (R7)*

The NCA does protect consumers from undesirable advertising practices. This is a magnificent achievement because there are many dangers that advertising can be used to have people getting into debt.):

“The stringent restrictions on advertising...were designed to prevent intending borrowers from being gulled into burdensome loan contracts by attractive advertising offering easy terms. Many necessitous individuals were thereby induced to take loans without any appreciation of heavy, if not penal, default provisions contained in the contract ...” (Kelly-Louw, 2008, pp.211).

The NCA’s negative option marketing and opting out concepts were introduced for the first time in consumer credit law. Credit providers can no longer induce consumers into a contract by stating that the contract is concluded if the consumer fails to communicate that they are declining the offer (Section 74). Any agreement concluded in terms of negative option marketing shall be deemed unlawful and void. The opting out clause provides that consumers must be given the opportunity to choose options such as opting out of the agreement (Section 74(4)).

Section 75 of the NCA affords consumers protection from marketing and sales, such as advertising. According to Regulation 21(6), to adequately control credit advertising, there must be enforcement. The NCA fails to provide measures from non-compliance. A remedy available to consumers is to lodge a complaint with the NCR.

#### **4.3.5. Pre-Agreement Disclosure**

Pre- Agreement disclosure emerged as a theme because the ability to have access to information before signing the agreement gives consumers a chance to make an informed decision.

*... a pre-agreement statement is given to consumers who are seeking credit. Woolworths even goes as far as discussing the terms of the credit agreement telephonically prior to credit being granted ... (R2)*

The NCA makes it a requirement that credit providers give a consumer a pre-agreement statement along with a quotation in which all the financial information is enclosed, for example, the deposit, credit given to the consumer, and installments that are payable. The quotation binds the credit provider for five business days after the date the quotation was given to the consumer.

It became apparent from the Woolworths respondents that despite the benefits of the NCA there were still some consumers who failed to see the NCA as a meaningful Act. For example, consumers' understanding of the NCA impacts on their finances and there are consequences if they do not adhere to it. By increasing financial education, the effect is an increase in the complexity of financial instruments and products and a strain on consumers' financial security. Also, consumers who are educated can make the best decisions for themselves. These consumers would attend to checking credit agreements and, as a result, reduce the power of credit providers from the credit market.

#### **4.4. Theme 3**

##### **4.4.1. Expenses for Lower-Income Earners**

It became evident that many lower-income earners had taken out credit of some sort and as a result of lack of knowledge of cost of credit found themselves unable to repay their debt.

*... many low-income earners are over-indebted due to lack of sufficient knowledge about credit and the consequences of failure to repay debt ... (R7)*



Based on Hurwitz and Luiz's report in 2007 that researched South Africa's working class indebtedness, 60% were over-indebted with the National Loan Register (NLR) or Consumer Credit Account (CCA). The other 40% of the sample reported that the debt was in the acceptable range.

### **Reason to borrow**

The study highlighted various reasons as to why people take out credit.

*...low-income earners are willing to default on their clothing accounts because they know that we will not repossess their clothing ... (R2)*

The main reasons consumers sought credit was dependent on numerous factors namely: convenience, indication of prestige, sense and security, economy and shipping abroad (Meidan & Davos, 1994).

#### **4.4.2. Over-indebtedness**

Over-indebtedness became an obvious theme because the Act sought to protect consumers from being over-indebted and unable to repay their debt.

*The NCA acts as a control measure from credit providers granting credit consumers cannot afford... (R5)*

The dti and NCR brochure „*Take control of your finances*’, which is a consumer's guide to managing debt, advises consumers on how to protect themselves from over-indebtedness, repossessions, and lists the following as signs of over-indebtedness:

- a) borrowing money to pay debts
- b) failure to pay bills regularly
- c) receiving letters of creditors requesting payment

d) judgments against you

According to Business Day (2007), it was recorded that, in 2003, there was 15% of the population that received 72% of credit. Credit usage was found to be the reason that low-income earners were getting over-indebted, with there being an annual increase of about 54% of bad debt judgments.

The Woolworths employees who were interviewed took the time to explain and educate consumers who found the NCA too restrictive with its affordability checks and credit history requirements. It also transpired that, even with education, people from certain cultures did not change their views.

#### **4.5. Theme 4**

##### **4.5.1. Bias against Race to Allocate Credit**

The theme of bias as to how credit was granted emerged.

*Previously, pre 1994, there was not a black middle class due to apartheid. For example there was "credit redlining", if you were from a township you were denied credit... (R3)*

Respondents indicated that the credit bureau needs to facilitate information being spread about consumers. The implication is there will be transparency about information that can be utilised for client selection and, as a result, decreasing discrimination in credit decisions. Credit bureau information that is credible can also be a foundation for statistical analysis to be able to ascertain whether there is any potential racial bias in the client selection by any credit provider. The credit bureau could, therefore, play a key role to support a financial market that is efficient and fair credit allocation. However, currently the credit bureau is viewed as fostering inequalities and discrimination instead of making the situation better (dti, 2007).

The consumer credit legislation seeks to regulate credit information by seeking to ensure that information held by the credit bureau is accurate, and consumers have the opportunity to rectify incorrect information or get it removed. The Department of Justice, with the Law Commission, has begun the process of drafting a new piece of legislation, which also deals with regulating credit information and the credit bureau.

#### **4.6. Conclusion**

Analysis of the data from the interviews resulted in numerous themes surfacing. Culture emerged, and it became clear that different cultures view credit differently. It became clear that due to the inequalities of the previous government, certain groups were denied credit and access to information. Still, the interesting thing is that, with the new system, cultures were gaining exposure. Cycle of poverty also emerged as a theme that people borrow in order to supply their family with necessities, and as a result, they find themselves tangled in a web of borrowing and paying debt. Consumer understanding was another theme; it appears that there is a general feeling that understanding of the NCA is low. Another theme was consumer awareness and knowledge; it appears that a greater effort to increase awareness is needed. The theme of consumer protection also appeared; the NCA seeks to protect consumers, and measures taken to protect consumer were mentioned. Consumer history and factors that affected credit being granted also become relevant regarding consumers seeking credit.

The next chapter presents the conclusion and recommendations of the study.

## CHAPTER FIVE – CONCLUSION AND RECOMMENDATIONS

### 5.1. Introduction

According to former President Thabo Mbeki (2003), South Africa is divided into two economies. The first is modern, developed, wealthy and integrated to the global economy, whilst the second economy is undeveloped and poor. It is not easy to escape poverty in the second economy. Credit plays a vital role to an economy because, by obtaining credit, consumers are able to purchase houses, cars, furniture and clothes, and other items, which, in turn, boosts the economy because of the jobs created by supply and demand.

Hirsch (2004) makes an interesting point that, once a society is divided as a result of the inequalities within that society, it becomes difficult to correct those imbalances without government intervention, hence the enactment of the NCA in 2005, which dealt away with the previous credit legislation that failed to provide consumers with adequate protection. The purpose of the NCA was to protect consumers from the unequal bargaining power of credit providers, and to prevent reckless lending and over-indebtedness.

The aim of this study was to ascertain whether the NCA is able to fulfill its purpose; that being the case, the researcher sought to understand the perceptions of the NCA.

The study made it clear that there was a need for the NCA in South Africa. South Africa is a country with two economies and as a result government intervention is necessary to try to reach a medium. Credit plays an important role in the economy because the more people can buy, the greater the demand as a result the need for a greater supply of goods and services, but it is also important that consumers are able and willing to repay their credit.

According to Jones and Schoeman (2006) the NCA codifies the basic rights of consumers regarding credit. Previously, the complexity of credit agreements meant that individuals were at the receiving end of unequal bargaining tools of contracts they had concluded. A large number of the South African population is made up of low-income earners who could only access microfinance as a result of not being able to access credit. Consequently, many consumers are left indebted and unable to repay their debts.

The NCA seeks to impose regulation on credit providers to ensure that credit granted to consumers does not leave the consumer over-indebted or unable to repay the debt. During the process of granting consumers credit, the credit grantor has to comply with the regulations of the NCA.

The NCA stipulates mandatory steps that credit providers must adhere to which, have the effect of protecting consumers. The process is as follows:

In the first phase, the applicant must be evaluated to establish whether they are creditworthy, and there must be an analysis of the risk the credit grantor assumes by lending to the consumer. All the relevant information must be captured, such as employment, credit history, and financial information.

The second phase is to attend to a credit appraisal. In this phase, there is scrutiny of information from the three-month bank statement and information about the credit history of the consumer from the credit bureau. The eligibility of the consumer, and terms and conditions are then given to the consumer in the form of an offer. This is important because the credit grantor has to make decisions which may affect the consumer's ability to repay their debt. At this stage, many sections of the NCA apply, which seek to protect consumers such as a requirement that consumers are given information, which seek to provide prevention of reckless lending through an assessment that considers the following, namely:

- a) understanding of the cost and risk of credit
- b) obligations and rights
- c) consumer's debt repayment history
- d) current financial status (Section 81(2)(b) of the NCA)

The third phase is when the credit applicant credit is granted, the consumer must be given a clear statement of the cost of credit and then the funds they requested (subject to their affordability) if he/she succeeded in passing the requirements for obtaining credit from the credit grantor. The funds are usually deposited directly into their account.

The study focused on the evolution of the NCA and examined the previous legislation on credit, namely Credit Agreements Act (1980) and the Usury Act (1968) and exactly where the legislation was failing to serve consumers. The role of credit in the economy and the impact of the NCA was considered. In order to gather data, a qualitative approach was taken because it creates the stage for open, descriptive interaction (Dunn, 2010). Semi-structured interviews were considered the best way to extract information from the respondents. Semi-structured interviews create a forum where questions are posed to the respondents, and they can respond by including their feelings or personal experiences. Respondents were encouraged to include any extra information they felt would add value to the research (Dunn, 2010). In-depth, face-to-face interviews were conducted with eight respondents. The data was analysed using thematic analysis by considering all the data from the interviews and finding similarities or differences in the responses (Miles & Huberman, 1994).

The penultimate chapter presented a discussion on the research findings. The final chapter answers the research questions that were set and outlines implications of the study and makes recommendations for future studies.

## **5.2. Research Questions**

The research aimed:

- a) To determine whether consumers view the NCA as beneficial.
- b) To establish whether consumers understand the purpose of the NCA.
- c) To determine whether credit providers view the NCA as beneficial.
- d) To determine whether the NCA effectively prevents unfair credit practices.

## **5.3. Key Findings**

After analysing the responses from the interviews, the following conclusions were reached.

### **5.3.1. Whether Consumers view NCA as beneficial**

The study found that consumers appeared to be divided about whether or not the NCA was beneficial.

A theme that emerged from the respondents was that of a cycle of poverty. It became clear that lower-income groups sought credit for different reasons to the middle-income groups. The lower-income groups required credit to purchase consumables that were actually necessities in their daily lives, such as food, electricity, and water. They would then have to borrow on a monthly basis in order to sustain their families. On the other hand, respondents who are from the middle-income group would require credit in order to maintain a certain lifestyle by purchasing things such as cars, homes and furniture, and other similar things. Lower-income groups did not have understanding or interest in the cost of credit and the implications regarding their ability to repay because they needed the cash.

Consumer's perception of the NCA, what they know about the NCA and the impact it could have on people's lives was considered in a survey by Blue Financial Services (2007). It was evident from the study that consumers' awareness was low, and understanding was also not very good, with almost half of the respondents being unable to relate to NCA and any impact it could have on their lives. In order to mitigate the consequences of consumer's lack of understanding on NCA, the NCA shifts the burden on the credit provider, who must disclose the cost of credit. The effect for consumers is increasing consumer awareness by giving consumers access to information in order to compare the various credit options that are in the market. A low consumer awareness of the NCA can result in consumers opting for credit that is convenient instead of choosing the most economical option. Braunsberger *et al.* (2004) state that the APR that appears in credit card applications was found to have a negative effect because consumers were distracted and, as a result did not focus on the cost of credit (Blue Financial Services, 2011).

A consumer's credit history is another area that was misunderstood by consumers and highlighted in the research. A requirement before receiving credit in terms of the NCA is to obtain information from the credit bureau about a person's credit history. The credit bureau has the responsibility of linking the consumer's details such as name, identity number, address, and other personal details to the credit application using the credit bureau files (Williams, 2009).

A consumer's credit history is used by retail agents and banks to ascertain the creditworthiness of an individual. The willingness and ability to repay debt timeously is considered by considering past repayments, the emphasis being on whether a consumer pays obligations regularly (Traub & Ruetschlin, 2012).

It became apparent from the interviews that there were consumers who lacked an understanding of the NCA and, as a result, viewed the NCA as not being of benefit to them because they would be denied credit due to their credit history. Knowler (2013) made an interesting point that credit history is important, especially when



considering that consumers should be able to access information this is essential, for example, if the consumer needs reasons as to why their credit application was denied. The NCA makes provision for consumers to be given the right to be furnished reasons about why their application was denied.

Consumers may not be aware that, when considering whether to grant credit or not, there are factors that must be considered, namely, a consumer's credit history, debt that is owed by the consumer, information that can have a negative effect on the consumer's credit history such as judgments or bankruptcies, and the amount of time a person has had a credit history. According to McKinnon (2010), a consumer's credit history is based on a credit score. A single late payment can have an adverse effect on the credit score. Another factor that is considered is how long a credit history is – a longer credit history depicts whether consumers are able to handle debt over a long period and are financially stable. The credit type also has an impact on the score; therefore, there needs to be a combination of revolving and installment credit.

### **5.3.2. Whether Consumers Understand the Purpose of the NCA**

The study made the finding that, generally, there was a perception that consumers lack understanding of the purpose of NCA, although there are consumers from the high-income bracket who have access to information and understand the NCA. The point was raised that understanding of the NCA was linked to a person's literacy. It was indicated that people with a higher level of literacy had access to information and, as result, understood the NCA, its intention and purpose. Whilst the lower literacy person does not have the required information at his disposal, consequently, when he applies for a loan and gets turned down or approved a lower amount, he fails to understand because all he wants is cash.

According to Brobeck (2007), in a consumer survey by the Consumer Federation of America (CFA), it was discovered that consumers do not have the required knowledge about credit.

According to one respondent, a factor that contributes to lack of consumer knowledge and education of their legal rights to facilitate regulation of the informal market is level of income. The higher-income earners have a better understanding of the NCR than lower-income earners, and this can be attributed to the lack of capacity within the NCR. That being said, intervention is required to prevent the lending market from being segregated.

### **5.3.3. Whether Credit Providers View the NCA as Beneficial**

The respondents highlighted that the NCA was enacted because from 1994 until early 2000s, there were many South Africans who were excluded from the formal credit system and that they would resort to microlenders who offered quick money without asking too many questions or having many requirements. The effect of such lending was that many consumers were left unable to repay their debts and would be left with a situation where they were over-indebted. The government realised that they had to intervene to correct the situation because the situation would not have corrected itself.

It can be deduced from the NCA that it is beneficial because it was enacted to protect consumers from reckless lending. That being so, it places the burden on credit providers to first satisfy themselves that a consumer is able to afford credit prior to credit being granted. Failure on the part of the credit provider to ensure that the consumer is not over-indebted can have adverse consequences on the credit provider, such as the credit agreement being rendered null and void by the court.

It was found that the NCA was beneficial for consumers; it provides relief to consumers in the form of section 86 debt counseling, which allows the consumers an

opportunity to get counselling about what they can afford to repay the credit provider and make arrangements accordingly. The NCA also seeks to be beneficial by regulating credit providers, credit bureau and debt counsellors by placing a requirement that they must be registered; this requirement seeks to regulate their actions regarding credit.

The overall view or perception was that the NCA was beneficial to credit providers because it forces the credit providers to first analyse the credit record and current financials of the consumer, and assess whether the consumer can afford to repay the credit. Although the NCA imposes stricter measures, and as a result less people could be eligible to obtain the credit, it seeks to also protect the credit providers from debtors who default in their payments.

As a result of credit providers being forced to educate their staff about the NCA so that they can comply with the provisions, credit providers themselves are better educated about the benefits of the NCA and the implications of compliance and non-compliance to the NCA.

#### **5.3.4. Whether the NCA Effectively Prevents Unfair Credit Practices**

This study found that the NCA sets out goals that it seeks to achieve, namely, disclosing the cost to finance, preventing reckless lending and over-indebtedness, education for consumers, limiting the interest rate that can be charged, and providing a remedy to a consumer who has been aggrieved by a credit provider.

According to Goodwin-Groen (2006), the NCA has seven goals that it seeks to achieve. A few of these are disclosing the cost of finance, reckless lending, restrictions as to charges on interest rate, consumers to be educated about their rights, remedies afforded to consumers, and regulating the credit industry as to who must register with the NCR.

It was found further that the NCA imposes regulations on credit providers such as that the credit providers must be registered in order to provide consumers with credit. The requirement that there must not be reckless lending is a protective measure that creates the requirement on credit providers to do an assessment of the consumer's credit worthiness. There is also section 129(1)(a) of the NCA that mandates that prior to a summons being sent to a debtor, there must be a letter of demand that serves as a notice to the debtor of his/her right to consult with a debt counsellor. The section seeks to resolve disputes to the agreement or create a plan that will enable the debtor to bring their payments up to date.

The study then highlighted that the NCA also imposes consequences on credit providers who advance reckless lending to consumers. In the event that it is discovered that the credit grantor provided credit to a consumer who is over-indebted, the agreement concluded can be made null and void.

The views from the respondents indicated mixed feelings about the NCA. One respondent raised the point that the NCA cannot protect someone who does not understand it. On the other hand, another respondent made mention of all the sections in the NCA that were created to protect consumers. He highlighted section 86 in the NCA that dealt with debt counselling and that credit providers must comply with. He also noted that there were amendments being done to the NCA to address the issue of protection of consumers' rights. The amendments would introduce guidelines to credit providers that would have to be satisfied prior to credit being granted.

The study found that the NCA also seeks to create a measure by which the NCA can have an effect on how consumers spend. Below are some examples of the measures.

Crowther (1993), states that as a measure of protection to consumers, the NCA makes it compulsory for credit providers to disclose information to the consumer, prior to the contract being concluded. The NCA seeks to protect consumer rights by

requiring the language in a contract to be in plain language in accordance with section 64. The NCA placed a requirement for the language to be in plain language because it seeks to create a state where consumers are aware of the choices they make regarding initiation fees, principal debt, interest, and other matters. Section 81 places the onus on credit providers to make an assessment about whether the consumer understands all the costs, risks and rights in a contract (Daily Industry News, 2008).

The NCA seeks to provide protection to consumers from advertising that is undesirable. Negative option marketing is prohibited, and a contract resulting from negative option marketing is void in terms of the NCA (Section 74).

One of the reasons for the need to regulate credit was that consumers lacked knowledge about the credit agreements they engaged in, and as a result, they were getting into contracts that only protected the interests of the credit provider, which would eventually lead to consumers being over-indebted. For that reason, a pre-agreement disclosure being included in the NCA is crucial because it provides consumers with power. Consumers are now given access to information prior to finalising the contract. Consumers are given a quotation of the credit agreement, where they are able to see the initiation fee, the interest, period of repayment, and other relevant information. Consumers are then given five days in which they can decide to cancel the agreement.

It appears that the dti is in the process of amending the NCA. An inclusion will be made that seeks to extend the protection of consumers. The credit provider is given the onus to conduct assessment guidelines. The consumer must satisfy the guidelines prior to being able to get credit. This will be a great protection because it forces credit providers to really assess all the information at their disposal.

## **5.4. Recommendations**

### **5.4.1 Awareness or training of staff to explain the NCA**

It was evident from the study that not enough people have the requisite education about the NCA; because of this, the Regulator should consider outsourcing a service provider that will be tasked with education and training. Education on the credit industry is crucial because consumer spending has an impact on the economy, and ignorance can result in consumers being left vulnerable. Education is invaluable because lower-income households seek credit because of necessity or for middle-income households, to maintain their lifestyle (O'Loughin & Szmigin, 2006).

Credit providers claim that there are programmes about the NCA that can assist with the education of consumers and staff; however, these fail to increase consumers' awareness. Consumers still lack the proper understanding of the impact of their financial choices and the consequences of failure to adhere to the conditions of the NCA. Prior to granting credit, consumers should be given at least five minutes to read over the terms of the credit agreement and be given a chance to clarify any confusion. The most important terms to the agreement should be highlighted, such as the initiation fee, the interest, the period of the loan, and the total cost of the loan.

According to Hilgerth and Hogarth (2003), consumers who are well educated and have access to information are able to make better choices about their finances. It will be these consumers who are able to check their credit transactions and avoid unscrupulous credit providers.

### **5.4.2 Suggested amendments to the Regulations**

Section 105(2) of the NCA states factors that the Minister must consider regarding prescribing limits on how much credit should cost, read with Regulation 45(2), which stipulates the factors that the NCR should consider when recommendations are made

to the Minister regarding how much credit should cost. There needs to be a balance of the competing interests between a consumer's need for credit that is cheap and a credit provider's need that is economically viable for moneylenders.

In order to deal with the above, the following should be considered:

- a) There should be a limitation as to the initiation fee that can be charged by the credit provider. The initiation fee should also be no more than 5% of the borrowed amount but should never exceed the maximum of R5 000.
- b) There should not be a monthly service fee placed on short-term loans. Alternately, there needs to be a limit placed on the maximum service fee, that is a maximum of 1% of the loan amount.
- c) The interest rate on short-term loans should have a maximum of 10%.
- d) There should be awareness of the impact of over-indebted consumers.

It becomes evident from the study that there is a need to increase awareness about the impact of over-indebtedness and the consequences of failure to repay debt. It was reported in a recent study by the NCR stats that consumers lacked sufficient protection about unsecured lending (National Credit Regulator, 2012). Failure of consumers to repay their debt could also have a crippling effect on the credit-providing industry; consequently, increasing awareness will protect consumers and credit providers.

#### **5.4.3 Intervention programmes**

The study revealed that due to over-indebtedness, there would a need for intervention programmes that could be in the form of free voluntary debt mediation that is offered by the National Debt Mediation Association (NDMA). The NDMA would be able to assist the NCR to address complaints against credit regulators, provide for debt

arrangements and assist with education of consumers about credit (NDMA Annual Report, 2011).

#### **5.4.4 Proper or responsible advertising**

The study found that advertising played a role in consumers seeking credit; as a result, advertising would have to be limited to proper or responsible advertising. According to La Ferrara, Chong and Duryea (2008), mass media can have an effect on behaviour. In an example of Brazil's RedeGlobo network that provided education on contraception, there was a decrease in women having children in the 1970s. Nonetheless, advertising alone does not increase awareness; it was noted that a soap opera was able to decrease infant mortality in Egypt by 70% by increasing awareness of Oral Rehydration Therapy (Abdulla, 2004).

#### **5.4.5 Transparency about credit approval**

The study highlighted the need for greater education of consumers, especially amongst consumers from a low-income bracket. The researcher believes that in order for credit providers to comply with the plain language requirements of the NCA, companies must:

- use plain, colloquial language
- use short sentences
- write with the ordinary consumer in mind

Greater transparency about the credit approval process would be beneficial to consumers, as it would increase credit providers' protection; and increase transparency and efficiency of financial markets, and result in the reduction of systemic risk (Financial Services Board, 2011). Transparency would also assist consumers to understand NCA.



## **5.5. Recommendations for Further Research**

Qualitative research places emphasis on themes and ideas instead of testing a hypothesis. As a result, this type of research does not give data that is conclusive, but instead, it acts as a guideline on future research that can be conducted (Hussey & Hussey, 1997).

This study was limited to certain respondents and had a specific focus. Future research could focus on the following:

- A quantitative study can be conducted as a follow up from this study over a longer time period to determine consumers and credit providers' understanding and impact of the NCA.
- Respondents in this research were Woolworths employees and a manager, and an employee of the dti who deals with consumers, competition law and policy. It would be interesting to determine the perspective that other retailers have about the NCA. Further research needs to be conducted with other industry players, such as banks. The introduction of the NCA was during a period where interest rates were high in 2006; hence, a decrease in consumer spending cannot be solely a result of the NCA. The NCA should also be measured during the easing phase of the monetary policy.

## **5.6. Conclusion**

The study sought to determine perceptions of the NCA. The study found that consumers and credit providers were divided as to whether the NCA was beneficial and whether consumers understood the purpose of the NCA. Credit providers view the NCA as beneficial because it created a process of first checking a consumer's credit history and indebtedness in order to establish whether they could afford to repay the credit prior to the credit being granted. Consumers, on the other hand, had

mixed views; the higher-income earners who have access to information about the NCA understood that the NCA was created to protect them, whilst lower-income earners who lacked access to information viewed the NCA as creating measures that made it difficult to obtain credit.

It was highlighted in the study that, as a result of South Africa's past, the economy was divided into two: the wealthy and the poor (ASGISA, 2006). Government intervened with the introduction of the NCA that sought to regulate the credit industry, as consumers purchasing goods on credit had an impact on the economy. The NCA outlawed many unfair lending practices in order to prevent reckless lending that would result in consumers being over-indebted and unable to repay their debt. The problem is that low-income consumers that were meant to benefit from the NCA are still a step behind.

According to Ramsey (2000), consumer protection can impact positively on consumer protection. He makes an interesting point that low-income earners suffer a higher consumer detriment than middle-income earners because this accounts for a greater percentage of their income. He cites Goode who makes a thought-provoking point that consumer credit legislation is truthfully not equipped or designed to address the needs of low-income earners.

The study also considered that the NCA sought to protect consumers from unfair practices in order for the NCA to effectively bring about changes to the credit market. The Regulator is tasked with increasing consumer education and awareness; in this regard, it is a vital requirement that credit providers comply with this endeavour. The study found that there were low levels of awareness mainly amongst low-income earners. Ignorance of the NCA can result in consumers succumbing to economic shocks, as it appears that the choice to get credit is part of the consumer culture along with the need to maintain a particular lifestyle (O'Loughin & Szmigin, 2006).

Finally, the study found that the NCA appears to be observed as positive by consumers who have knowledge of it and its intentions. The NCA protects consumers from credit providers' unequal bargaining power. As a result of the prejudices caused by apartheid, many low-income South Africans lack knowledge of credit and the consequences of credit. A consumer who decides to obtain credit should have exposure to a credit market that is competitive, transparent, fair and equally priced. Consumers should have a full understanding of their rights and obligations when opting for credit. Consumers need to be comfortable with the NCA and what it is trying to do as well as the consequences on their finances.

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## Appendix 1: Interview Questions

- Could you please provide a brief background of your experience in/with the credit industry?
- Do you think that consumers understand the purpose/benefit of the National Credit Act? Explain the reason for your answer.
- What are the broad categories of factors influencing credit being granted to a consumer?
- Do you think consumers and/or credit providers view the National Credit Act as beneficial?
- Are there factors influencing the credit industry unique to South Africa?
- What factors will only be experienced in South Africa?
- Do you think consumers and/or credit providers understand the National Credit Act and its impact?
- Do you think the National Credit Act provides sufficient protection for consumers?

## **Appendix 2: Informed Consent Form**

**UNIVERSITY OF KWAZULU-NATAL  
GRADUATE SCHOOL OF BUSINESS AND LEADERSHIP**

**MBA Research Project**

**Researcher: Phola Ngubane (0822972225)**

**Supervisor: Cecile Gerwel Proches (0312608318)**

**Research Office: Ms P Ximba (0312603587)**

Dear Respondent,

I, Phola Ngubane, am a Master's in Business Administration student, at the Graduate School of Business and Leadership, of the University of KwaZulu-Natal. You are invited to participate in a research project entitled: *Perceptions of the National Credit Act: A Case Study of Woolworths Hillcrest*. The aim of this study is to look into how the NCA is viewed.

Through your participation, I hope to understand the extent to which the legislature's intention is understood and implemented by those affected by the NCA. The results of the interviews are intended to contribute to the study of effectiveness of the NCA to prevent unfair credit practice.

Your participation in this project is voluntary. You may refuse to participate or withdraw from the project at any time with no negative consequence. There will be no monetary gain from participating in this survey. Confidentiality and anonymity of records identifying you as a participant will be maintained by the Graduate School of Business and Leadership, UKZN.

If you have any questions or concerns about completing the interview or about participating in this study, you may contact me or my supervisor at the numbers listed above.

The interview should take about 45 minutes. I hope you will take the time to participate in the interview.

Sincerely

Investigator's signature \_\_\_\_\_ Date \_\_\_\_\_

This page is to be retained by the participant

**UNIVERSITY OF KWAZULU-NATAL  
GRADUATE SCHOOL OF BUSINESS AND LEADERSHIP**

**MBA Research Project**

**Researcher: Phola Ngubane (0822972225)**

**Supervisor: Cecile Gerwel Proches (0312608318)**

**Research Office: Ms P Ximba (0312603587)**

**CONSENT**

I.....(full names of participant) hereby confirm that I understand the contents of this document and the nature of the research project, and I consent to participating in the research project.

I understand that I am at liberty to withdraw from the project at any time, should I so desire.

.....  
SIGNATURE OF PARTICIPANT

.....  
DATE

This page is to be retained by the researcher

## Appendix 3: Ethical Clearance Approval



4 June 2013

Ms Phola Ngubane 201501495  
Graduate School of Business and Leadership  
Westville Campus

Protocol reference number: HSS/0404/013M  
Project title: Perceptions of the National Credit Act: A Case Study of Woolworths Hillcrest

Dear Ms Ngubane

**Expedited approval**

I wish to inform you that your application has been granted Full Approval.

Any alteration/s to the approved research protocol i.e. Questionnaire/Interview Schedule, Informed Consent Form, Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through the amendment/modification prior to its implementation. In case you have further queries, please quote the above reference number. Please note: Research data should be securely stored in the school/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours faithfully

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Professor UBob (Chair) & Dr S Singh (Deputy Chair)

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cc Supervisor: Cecile Gerwel Proches  
cc Academic Leader Research: Dr SA Bodhanya  
cc Post Graduate Administrator: Ms W Clarke

Humanities & Social Sciences Research Ethics Committee  
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