



23 04 2018

Senator Jane Hume
Chair, Senate Standing Committee on Economics
Parliament House
Canberra ACT 2600
By email: economics.sen@aph.gov.au

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Sydney NSW 2000
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Re: National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018

Dear Senator Hume,

Westpac Group (**Westpac**) thanks the Senate Committee for the opportunity to comment on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* (the **Bill**). Westpac supports the Bill, which will provide long term benefits for both customers and credit providers (**CPs**).

Westpac also thanks the Treasury for the opportunities we have been given to consult on the exposure draft Bill. We note that the Bill before the parliament now contains a number of the clarifications and improvements we sought. We have therefore restricted our comments here to points of principle which will assist smoother implementation of mandatory Comprehensive Credit Reporting (**the Scheme**) and some further points for clarification.

Coverage

The Bill restricts the Scheme to the majors. Westpac continues to hold a firm belief that the Scheme should apply to all CPs. Restricting the Scheme to the majors leaves 20 per cent of consumer credit lending out of the picture. Experience overseas shows that to make the system credible and rigorous, and the data as accurate and comprehensive as possible, all CPs need to participate. Without full coverage, Westpac will not have access to the credit history details of accounts a customer holds with CPs who are not supplying comprehensive information, potentially resulting in an incomplete assessment of their financial situation. Recent commentary on responsible lending underlines that this is not in line with community expectations.

Whilst we note that the Government is open to including other CPs at a later date, there appears to be no mechanism to monitor which other CPs come on board and the speed at which that occurs. The Bill (in s133CZL) creates a statutory review provision, with a review to be completed by 1 January 2022. We suggest that this review must examine whether there have been any unintended consequences for customers of CPs not caught by the Scheme and are not voluntarily contributing comprehensive information.



Governance and Data Consumption

In his Second Reading speech, the Assistant Treasurer referred to “building on already-established frameworks to build the comprehensive credit reporting of the future” and noted the Bill “aligns closely to existing industry standards”. We absolutely welcome this approach and underline that it is critical that the Principles of Reciprocity and Data Exchange (**PRDE**) are clearly referenced in regulations to govern both CPs and credit reporting bodies (**CRBs**). In addition to providing certainty to the data supply and exchange processes, the PRDE contains important agreed principles that are governed by the PRDE Administrator Entity, such as resolution of issues between various CPs and CRBs with regard to differences in reporting data quality.

In this respect, we note that the Explanatory Memorandum (EM 1.164) states that “The Government expects that a determination made by ASIC will refer to the industry developed PRDE which is publicly available on the Australian Retail Credit Association (**ARCA**) website”. This provides welcome clarity on the Government’s intent and Westpac looks forward to engaging in consultation on the regulations.

We do note that we retain some questions with regard to how the legislation will intersect with the regulations. For instance, subsections 133CZA(2) and 133CZA(3) refers to disclosure of *protected information* by CRBs as prescribed by the regulations. We understand through the Second Reading speech that the PRDE is likely to be incorporated through regulations under this Bill to ensure that those CPs “already supplying comprehensive information will continue to benefit from the protections and principles embedded in the existing industry established framework”. The PRDE framework does not consider the *banking group* concept introduced in the Bill, but refers to the definition of *credit provider* as provided in s6G of the *Privacy Act 1988* (the **Act**).

Westpac will be engaging with Treasury with regard to ensuring that the regulations fully reflect the intent of the legislation. That is, we will be seeking to ensure that CRBs are governed by the same restrictions that govern CPs (as appropriate); and that Westpac subsidiaries will be able to consume CCR information. Consistent regulations will ensure that the legislation is robust and the interests of consumers and expectations of regulators are aligned with the legislation.

Interaction of the Bill with voluntary supplies of CCR information

Ongoing supplies of credit information in s133CU should be consistent with the reporting requirements in the Privacy (Credit Reporting) Code 2014 (Version 1.2) (the **CR Code**) to maintain consistent reporting in the Scheme, as it currently supports the voluntary comprehensive participation regime. For example, paragraph 10 of the CR Code includes additional information relating to *payment information*. For background, the CR Code is a written code of practice about credit reporting under s26N(1) of the Act, and plays an important part of the regulatory framework for the comprehensive credit reporting system in Australia. It was intended to clarify aspects of the credit reporting obligations imposed by Part IIIA of the Act and the *Privacy Regulation 2013*.

An option could be to incorporate the CR Code into s133CU Items 1-4, similar to how the *Privacy Act* requirements have been referenced in this table. This change will ensure ongoing suppliers of mandatory credit information comply with both the Act and the registered CR Code. This revision to the table will also



support any ongoing changes to the CR Code such as the current CR Code Review process led by the ARCA¹, to be incorporated into the Scheme when they are enacted.

Hardship and Repayment History Information

Westpac has been providing financial assistance to customers in hardship for 10 years through the Westpac Assist Program, ensuring customers get the best financial support during times of hardship. Westpac welcomes the announcement by the Treasurer that the Attorney-General will be leading a comprehensive review of the operation of hardship arrangements under the Act and the CR Code, which is expected to be completed by late 2018.

CPs are required to report Repayment History Information (**RHI**) in accordance with section 6V of the Act, Regulation 12 of the *Privacy Regulation*, and paragraph 8 of the CR Code. Under this framework, CPs will not have the option to withhold the fact that customers have not met repayments in accordance with their original contract. The current framework does not allow for a 'hardship flag', an indicator that the customer has suffered a short term, unexpected event and is working with their financial institution. Without the ability to report a hardship flag, Westpac will not be able to identify customers who are experiencing short term hardship with another lender.

In Westpac's view, the customer benefits from including a 'hardship flag' because it allows for a transparent and fair representation of a customer's situation – it would represent the current status of the arrears and protect customers from inappropriate lending when the customer is at the height of their financial stress.

Westpac takes the view that when the customer recovers from financial difficulty and has been making regular and up-to-date payments, CPs should be able to recommence lending in accordance with its lending policies. Hardship flags would assist CPs to make further enquiries about a customer's previous RHI data. With this indicator, CPs would be able to perform better lending assessments on credit applications and ensure the quality of credit information they use and disclose is 'accurate, up-to-date, complete and relevant', as required by the Act.

On the basis of the above, Westpac submits that an earlier review time frame is necessary to ensure the fairest possible outcome for any customers who are in hardship during the reporting period.

Security of data

Westpac welcomes the addition of a mechanism to raise concerns with CRBs' security management. In today's fast-moving data security landscape, data security standards will be ever changing. A breach of security of personal or credit information in Australia would be disastrous for confidence in the Australian financial system.

To conclude, Westpac supports this Bill (with further amendments) and thanks the Government for the opportunity to consult throughout the process. We have begun communicating the change to our customers and we look forward to the benefits this reform will bring. At Westpac we believe we will achieve better lending through better conversations with customers. We hope that non-major CPs will join us to

¹ PWC undertook a review of the CR Code on behalf of the OAIC and published their final report on 8 December 2017.



ensure the Scheme is indeed 'comprehensive'. We look forward to discussing the proposed regulations with the Government.

Should you require any further information, do not hesitate to contact Jaimie Lovell on [REDACTED] or by email at [REDACTED]

Yours sincerely,

A large black rectangular redaction box covering the signature area.

Michael Chouefate
Head, Group Government and Industry Affairs