Australian Banking Association

20 April 2018

Committee Secretary
Senate Standing Committee on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
By email: economics.sen.@aph.gov.au

Dear Sir/Madam

National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 [Provisions]

The Australian Banking Association (**ABA**) is pleased to have the opportunity to provide its views to your Committee on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* [Provisions] (**the Bill)**.

With the active participation of its members, the ABA provides analysis, advice and advocacy for the banking industry and contributes to the development of public policy on banking and other financial services. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry.

This submission comprises five parts:

1) A brief outline of the nature and benefits of the comprehensive credit reporting regime under Part IIIA of the Privacy Act.
2) The importance for banks, under the mandatory regime and in the future, reporting repayment history information (**RHI**) where customers in financial hardship are working with their banks under an arrangement to continue to manage their loans.
3) The intended purposes of duplicating the requirement for banks to provide audited reports to the Treasurer and ASIC other than for reasons of compliance with the mandatory regime.
4) The review by the Attorney-General's Department of the operation of financial hardship arrangements in the context of reporting repayment history information.
5) Future developments if the Government is minded to extend the mandatory comprehensive credit reporting (**CCR**) regime to other credit providers under the regulation-making power in the Bill.

The nature and benefits of comprehensive credit reporting

Over more than a decade the Australian Retail Credit Association (**ARCA**) has been the lead body advocating for the introduction of CCR in Australia. This would bring Australia into line with other countries such as New Zealand, the UK, South Africa and Singapore.

Thirteen of the ABA's members are also ARCA members.

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ARCA's website describes CCR as transforming "assumption-based decision making into facts-based outcomes."

Prior to the introduction of CCR, credit file data was compiled using 'negative' data that painted a picture of a borrower's credit intentions as opposed to their credit situation. Credit providers reported applications for consumer credit made in the previous five years, and defaults, yet there was no data on how many lines of credit an applicant had open, how much they owed or how they had historically handled repayments. This was a backwards view of major credit problems (defaults) with no visibility over the extent of existing exposures, or how they were being managed. This prevents individuals from being able to easily access affordable credit until adverse information drops off the file.

CCR removes this information asymmetry with the result that consumers will have fairer and responsible access to credit with their credit providers.

In New Zealand a CCR regime has been in operation since April 2012 under the Credit Reporting Privacy Code. Benefits identified for introducing the NZ regime included:

- Giving credit providers a more accurate and complete picture of individuals' creditworthiness, allowing them to make better assessments of risk and facilitate a more responsible lending decision.
- Increasing competition in the credit industry by enabling access to better information; and
- Opening mainstream credit to a wider pool of individuals who may otherwise be excluded due to a lack of verifiable information about them.

According to the New Zealand Privacy Commissioner's Credit Reporting Privacy Code Fact Sheet 1, the Australian law was considered when developing their code of practice. The two main consumer credit reporting agencies in New Zealand had Australian operations and most of the major banks were, and are still, Australian-owned.

The Australian law is a complex mix of statute, code of practice and determinations. However, many of the fundamentals of the New Zealand code are similar to the Australian law. The New Zealand code is simpler to understand and less detailed than the Australian law.

Reporting repayment history information in cases of customers in financial hardship

The Bill has proceeded towards legislative enactment without clear regulatory provision on how banks must report RHI in cases where a customer has fallen into financial hardship, has missed a payment under their credit facility but is working with their bank to allow time for them to get back on their feet.

Currently, the CCR system provides for a bank to report to its credit bureau whether the customer has met the monthly payment(s) due under their credit facility. If the payment is made on time (within the 14 days period of grace) the CCR system records a "0". If the payment is missed (after the grace period of 14 days) the system will record this as "1" (missed payment) and so on if the payment remains unpaid (for the next month as "2" etc). These entries are maintained as a record of performance by the customer for 24 months.

The Australian Privacy Act does not permit the bank to report that the customer is in financial hardship which is not the case in New Zealand.

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In section 6V of the Australian Privacy Act, repayment history information means:

> (1) If a credit provider provides consumer credit to an individual, the following information about the consumer credit is repayment history information about the individual:
>
> (a) whether or not the individual has met an obligation to make a monthly payment that is due and payable in relation to the consumer credit;
>
> (b) the day on which the monthly payment is due and payable;
>
> (c) if the individual makes the monthly payment after the day on which the payment is due and payable--the day on which the individual makes that payment.
>
> (2) The regulations may make provision in relation to:
>
> (a) whether or not an individual has met an obligation to make a monthly payment that is due and payable in relation to consumer credit; and
>
> (b) whether or not a payment is a monthly payment.

In New Zealand's Credit Reporting Privacy Code https://www.privacy.org.nz/assets/Files/Codes-of-Practice-materials/Consolidated-CRPC-Including-Amendments-2-to-5-and-7-to-12-28-September-2017.pdf

> Repayment history information means, in relation to a credit account for which there are periodic payments:
>
> (a) whether or not in any given month a periodic payment is due and payable;
>
> (b) where a periodic payment is due and payable in that month, whether or not the individual concerned has made that payment; and
>
> (c) any other information required to identify or classify the payment

The key difference between these two meanings is that in New Zealand "any other information" is required.

In Australia, the bank can only report whether the customer has made the due payment but this doesn't explain that the customer may be paying nothing under an arrangement with their bank or is paying significantly less than the original amount payable under the credit facility. In short, this means other credit providers that are permitted to access the CCR system through credit reporting bodies won't know the customer is in difficulty (if the payment is reported only as missed) yet may be working with their bank (a positive situation).

Further, without strong guidance, various stakeholders have a different expectation on how RHI should be reported. Some options mean the credit provider has no visibility that the customer is in financial difficulty and may extend further credit, while other options will not reflect that the customer is actively engaged with the credit provider to work through their current difficulties.

On the other hand, if the payment is recorded as paid because the customer is adhering to a different payment arrangement made with their bank, other credit providers could conclude the individual is a good credit risk and may place the customer under greater hardship by extending further credit. The ABA considers this as an unacceptable exposure of customers to risk which can be obviated if a hardship indicator is permitted to be added to the relevant RHI reporting under the Privacy Act. This would appear to be consistent with responsible lending requirements.

Customers who can be identified as in financial hardship in the reporting of RHI are more likely to be considered favourably because this indicates they have been working with their bank and starting to show signs of good repayment history since the hardship event. This is in stark contrast to the customer who has shown poor repayment history with no apparent genuine reason for their delinquency.

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Review by the Attorney-General's Department

The Government has announced a review of the operation of financial hardship arrangements in the context of RHI reporting. The review will be led by the Attorney-General's Department and will include consultation to consider the current hardship arrangements under the National Credit Act and how they intersect with the consumer credit reporting framework. The review is expected to be completed late in 2018 according to the announcement.

This is a welcome initiative in which the ABA and members will participate constructively.

It is noted that the timing of this review and any proposed solution of the issue is unlikely to be completed and any decision made before the commencement of the mandatory CCR regime, and before the end of the 90 days transition period ending in September 2018.

The Office of the Australian Information Commissioner (**OAIC**) has published guidance for industry which provides certainty as to how these arrangements are to be reported under the existing laws. However, this guidance has been contested by a number of consumer advocates.

The OAIC's Privacy fact sheet 38 "Hardship assistance and your credit report" May 2014, confirms that a credit provider must not disclose to a credit reporting body for inclusion in the customer's credit report the fact that the customer has applied for hardship assistance.

Without an agreed resolution and legislative change, the credit standing of those customers who are unable to meet their repayment obligations due to financial hardship are likely to be detrimentally affected. They are likely to be lumped together with those customers who simply don't comply with their repayment obligations.

Ideally, if the completion of the Attorney-General's Department's review can be brought forward, this increases the probability of a fairer and more favourable outcome for consumers, banks and other credit providers in the credit reporting system, and with the transition of RHI within the mandatory CCR legislation to be preceded by a settlement.

The Bill and the review provide a convenient and timely opportunity to deal with this issue once and for all in the best interests of all concerned.

Audited reporting to the Treasurer

The requirement is for applicable banks to provide statements to the Treasurer in January 2019 and 2020 certifying their compliance with the initial supply provisions for the Bill.

The Explanatory Memorandum refers to the requirements but does not appear to identify other reasons than compliance. The Assistant Minister to the Treasurer's second reading speech includes:

> "Where credit providers and credit reporting bodies are subject to requirements under the bill, they will be subject to penalties if they fail to comply.
>
> Enforcement of these requirements will be responsibility of ASIC, who will be granted the appropriate powers to collect information and require audits to confirm that these requirements are ultimately being met."

It is unclear why the requirement to provide statements of compliance to the Treasurer are necessary (this is a regulatory impost which would duplicate the role of the regulator ASIC).

The ABA believes only the one process of audited compliance reporting should be made to ASIC. These statements can then be provided by ASIC to the Treasurer.

Future developments

Section 133CN of the Bill provides for the extension of the mandatory CCR regime to other credit providers under a regulation-making power. The Explanatory Memorandum notes that the Government expects regulations would be made "after the mandatory regime has been in operation for a period of time and other credit providers are not voluntarily supplying data".

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The ABA notes that the burden of ongoing regulatory change is very material for all its members, but specifically so for regional and smaller ADIs with more limited resources. If the Government is minded to exercise this regulation-making power to extend the mandatory CCR regime to regional and smaller ADIs, the ABA recommends an additional period of consultation with these ADIs to identify an appropriate and achievable implementation timeframe.

We would be pleased to provide further material to the Committee if required.

Yours faithfully

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