AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

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

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Senate Standing Committee on Economics,

Thank you for the opportunity to provide the Committee with a submission on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill*.

The Australian Retail Credit Association (ARCA) is the peak industry association for organisations involved in the disclosure, exchange and application of consumer credit reporting data in Australia. We were established in 2006 with the purpose of promoting best practice in credit risk assessment and responsible credit practices.

Our Membership is voluntary and drawn from both credit providers and credit reporting bodies. ARCA's membership includes the largest Australian Prudential Regulation Authority (APRA) regulated banks, and a broad range of fintechs, finance companies, and credit union and mutual credit providers. Collectively, ARCA Members account for over 95 percent of all consumer lending by dollar volume, and over 80 percent by number of accounts. Furthermore, the four national credit reporting bodies are all ARCA Members.

In our submission we set out our views on the Bill, together with background information on the following matters that may assist the committee in their consideration of the Bill:

- The benefits of comprehensive credit reporting.
- The industry developed frameworks that facilitate orderly and transparent supply of credit reporting data:
  - The Australian Credit Reporting Data Standard (ACRDS).
  - The Principles of Credit Reporting and Data Exchange (PRDE).
- The impact of the draft legislation.
  - Consumer rights and protections.
  - Data privacy.
  - Hardship.

1. ARCA'S VIEWS ON THE BILL

In November 2017, the Turnbull Government announced that it would introduce a mandatory comprehensive credit reporting regime for the four major banks, with the regime requiring those banks to share fifty percent of their comprehensive data by July 1 the following year (i.e. 2018), and the remaining 50 percent by July 1 the year after.

As we noted at the time, ARCA welcomes the certainty that will be provided by the introduction of mandatory comprehensive credit reporting. We agree with the Treasurer Morrison, who described a functioning comprehensive credit reporting system as "a vital part of Australia's economic infrastructure"[1].

As set out below, ARCA and industry have expended significant effort over many years to develop frameworks for an efficient and effective comprehensive credit reporting system. ARCA appreciates the complexity of implementing mandatory comprehensive credit reporting and we welcome Treasury's willingness to engage with both ARCA and industry participants. Over the last year, ARCA has meet with Treasury on a number of occasions to provide background on the operation of the credit reporting system and the role played by frameworks developed by industry.

The Bill establishes both the requirements for major banks to *supply* mandatory credit information to credit reporting bodies, and also the process for the *on-disclosure* of that information by the credit reporting bodies to credit providers. The Bill does not alter the restrictions imposed on industry by the *Privacy Act 1988 (Cth)* in terms of the data elements able to be reported, the limits on access to that data, the consumer's rights to access and corrections and the purposes for which that data may be used.

Overall, we consider that the Bill establishes an appropriate level of specification and flexibility in mandating the *supply* of credit reporting by the major banks. We note however, that the process for excluding particular account types from the operation of the mandatory requirements – which involves the making of regulations – may be inflexible in practice given the potential operational requirement to exclude such accounts. We suggest that consideration be given to, for example, providing the Australian Securities and Investments Commission with a determination making ability to exclude certain account types.

In respect of the *on-disclosure* of the mandatory credit information to credit providers, we note the intent, as described in the Explanatory Memorandum (1.180), to give effect to the 'principle of reciprocity'. This principle is vital to the efficient operation of the credit reporting system as it ensures that all credit providers *supply* their own information into the system, in order to get information out. All credit providers can then have confidence that everyone participates in the system on equal terms.

Industry frameworks that have been created to support the operation of credit reporting also embed the principle of reciprocity. Specifically, the Principles of Reciprocity and Data Exchange (PRDE) developed by ARCA is the framework that has been adopted by credit providers currently participating in comprehensive credit reporting. Key elements of the PRDE – which would otherwise be contrary to competition laws - have been authorised by the ACCC because principles such as reciprocity are viewed as critical in order to create confidence in the integrity of the credit reporting system, and incentives for participation in

[1] Hon Scott Morrison MP, *Media Release – Supporting Australia's FinTech Future*, 21 March 2016

comprehensive credit reporting. In order to ensure all participants in credit reporting, irrespective of their size or product mix, do so on equal terms, the PRDE also requires that data supplied under this framework is only on-supplied to other participants who also subscribe to the framework. Again, this requirement was granted ACCC authorisation.

We understand that the Bill and the associated Regulations will reflect the principle of reciprocity (Explanatory Memorandum, 1.180) and some other key elements of frameworks already developed by industry and authorised by the ACCC. These frameworks are also already in use by credit providers not subject to the mandatory regime, as well as the National Australia Bank which is. We would also expect that the other banks subject to the mandatory regime will also subscribe to the PRDE in order to have their data shared on the same terms as other credit providers, and to have access to those credit providers' data. We understand that the Regulations will be drafted in a way that will allow industry frameworks such as the PRDE to operate. While the PRDE is currently the only industry developed framework for the exchange of comprehensive credit data, other frameworks may emerge, for example for specific industry sectors, or as a result of technological change which may make other models feasible.

Accordingly, ARCA considers that the Bill establishes an appropriate mechanism for mandating the *supply* of credit reporting data by the major banks, and – subject to the finalisations of the Regulations – ensures that the industry developed frameworks relating to *on-disclosure* are supported. Once the major banks' data is supplied into the system, the incentives for other credit providers to also participate will increase – while allowing each credit provider to determine the precise timeline for implementation. As noted above, many credit providers both large and small are already participating in comprehensive credit reporting under the PRDE. We would expect participation in comprehensive credit reporting by other credit providers to increase rapidly.

Lastly, we understand that participation by all credit providers (apart from the mandated banks) in 'negative only' credit reporting (i.e. credit reporting data other than consumer credit liability information and repayment history information – see below) will be unaffected by the Bill and the Regulations, ensuring that credit providers from all industry sectors that are not ready to adopt comprehensive credit reporting are still able to access the credit reporting system on current terms. Likewise, the PRDE as an industry framework does not require credit providers to subscribe in order to obtain negative only data. This is particularly important to telecommunication and utilities providers which, at present, are unable under the *Privacy Act* to disclose and access repayment history information. In this respect, we noted the Treasurer's statement that Government, through discussion with its Fintech Advisory Group, supported the use of comprehensive credit reporting by gas, electricity and phone service providers[2], and we would encourage that their participation on equal terms to other credit providers be given priority. We do not believe it is appropriate to make their participation mandatory.

[2] Hon Scott Morrison, MP, *Address to Fintech Australia Collab/Collide Summit, Melbourne, 2 November 2017*

2. BACKGROUND TO CREDIT REPORTING IN AUSTRALIA

Historically, only limited credit-related personal information could be collected and disclosed. Australia, until 2014, remained one of only a few advanced financial systems internationally to have a system where only so-called negative information could be shared by credit providers. That information primarily related to payment defaults, court judgments and bankruptcy reports (i.e. 'negative only information').

In 2008, the Australian Law Reform Commission (ALRC) conducted a review of Australian privacy law. ARCA advocated throughout the law reform process for the efficient adoption of comprehensive credit reporting in Australia. Ultimately, while the ALRC review recommended Australia adopt comprehensive credit reporting, it was linked to the creation of responsible lending obligations for providers of consumer credit. The *National Consumer Credit Protection Act 2009 (Cth)* (NCCP), which established both a licensing regime and responsible lending regime for providers of consumer credit, was implemented in 2010. The *Privacy Act* was subsequently amended in 2012 to allow comprehensive credit reporting, which came into effect in 2014.

The 2014 credit reporting reforms opened the door to comprehensive credit reporting by allowing more diverse and positive information to be shared, which included the collection and disclosure of consumer credit liability information (CCLI) – which includes key information about the loans that the consumer has outstanding - and repayment history information (RHI) – which is a record of whether the consumer has made their loan payments on time.

i. Benefits of comprehensive credit reporting

As recognised by the Financial System Inquiry (FSI), more comprehensive sharing of credit data will reduce information imbalances between lenders and borrowers, facilitating borrowers switching between lenders and greater competition among lenders.[3] The FSI's Final Report strongly supported the benefits of comprehensive credit reporting and the industry approach to data sharing championed by ARCA.

This availability of more data to lenders can lead to borrowers having more options to access credit on more favourable terms, including at a lower cost of credit. ARCA's application to the ACCC for authorisation of principles within the PRDE was accompanied by a report prepared by KPMG on the benefits of enhanced credit data. As noted in that report, more comprehensive data allows credit providers to better assess the credit risk of individual borrowers.[4]

The KPMG reports also recognised that more granular assessments of the ability of borrowers to service debts would reduce the proportion of credit applications declined on a relatively arbitrary basis due to lack of credit data. In turn, this could provide considerable social benefits to those currently marginalised by the financial system.[5]

[3] Financial System Inquiry, Final Report, November 2014, page 191.
[4] KPMG, Report to the Australian Retail Credit Association: The benefits of enhanced credit data exchange, January 2015, page 20, available at www.accc.gov.au/public-registers/authorisations-and-notifications-registers/authorisations-register/australian-retail-credit-association-limited-authorisation-a91482
[5] KPMG Report (2015), page 7.

In addition, comprehensive credit reporting makes it possible to efficiently verify an individual's credit commitments and therefore assess credit applications and manage credit accounts more accurately and responsibly. In particular, the improved ability to verify an individual's current credit commitments assists the credit provider to meet their responsible lending obligations under the NCCP.

The move to comprehensive credit reporting is also key to the viability of technology-powered alternative lenders, including peer-to-peer players and other fintechs. Their tailored lending products are dependent on the availability of high quality, diverse and dynamic information about their customers.

In Australia, credit providers advocated for the benefits of comprehensive sharing over a number of years. As National Australia Bank pointed out during the Australian Law Reform Commission inquiry, people who failed to disclose their true financial position on credit applications posed a disproportionate risk to credit providers[6]. This risk is passed on to other borrowers through more expensive credit. Comprehensive reporting reduces a borrower's capacity to either intentionally or mistakenly fail to disclose their true position, and so also reduces the cost of customer defaults. Credit providers of course now also have a responsible lending obligation, and comprehensive credit reporting will be one tool that can be used to verify a borrowers' credit position.

The law was reformed because it has been internationally recognised that a comprehensive credit reporting system has many consumer and economic benefits. In fact, analysis by Veda (now Equifax) has shown that New Zealand lenders participating in comprehensive credit reporting have reported a 10-20 percent increase in approval rates for new-to-lender applicants – without a decline in credit quality.[7]

The 2014 law changes which enabled comprehensive credit reporting were in line with what the World Bank considered best practice. Research by ACIL Tasman, commissioned by Mastercard, found that over a ten-year period failure to move away from Australia's negative reporting system would cost up to $5.3 billion in "lost capital productivity"[8]. Other international reports, including from the US-based Political and Economic Research Council (PERC) have noted that credit reporting increases access to credit and stimulates economic growth[9].

ii. Industry developed frameworks

To enable implementation of comprehensive credit reporting in Australia, ARCA Members identified the need for the development of two industry-based frameworks: the Principles of Reciprocity and Data Exchange, and the Australian Credit Reporting Data Standard.

The Australian Credit Reporting Data Standard (ACRDS) is a standard of data exchange that was developed by ARCA and its Members in 2014. The ACRDS is a technical standard which details the requirements for reporting credit accounts, and events relating to those

[6] National Australia Bank, *Submission PR 408,* 7 December 2007
[7] See https://www.equifax.com.au/news-media/comprehensive-credit-reporting-key-responsible-lending
[8] See https://www.theage.com.au/articles/2004/04/23/1082616326178.html
[9] Political and Economic Research Council, *The Structure of Information Sharing and Credit Access*, July 2008

accounts, between credit providers and credit reporting bodies in Australia. As a signatory to the PRDE, a credit provider or credit reporting body agrees to implement the ACRDS. The intent in creating the ACRDS was to ensure consistency in data between credit providers, minimise costs in supplying data, and also contribute towards a credit provider meeting its obligations that the data it supplies is accurate, complete, and up to date.

The Principles of Reciprocity and Data Exchange (PRDE) are a set of voluntary principles, developed by ARCA and industry, to facilitate the transition of credit reporting in Australia to a comprehensive system and manage the ongoing exchange of that information. The core of the PRDE framework are key principles for data exchange outlining the obligations and rights of credit providers and credit reporting bodies. Once credit providers and credit reporting bodies become signatories to these principles, they commit to only supplying and using data provided by a PRDE signatory under the terms of the PRDE. The ACCC recognised this position by authorising the PRDE in December 2015.

Three of the key principles in the PRDE relate to *Reciprocity*, *Consistency* and *Enforceability*.

Reciprocity: This ensures that a credit provider signatory only receives information at the same level as they supply into the PRDE data pool, and that the data of signatories is not shared with non-signatories. The reciprocal model creates an incentive to share, because when a credit provider shares information, they receive the same equivalent high-quality data in return. The principle of reciprocity does not extend to the exchange of negative-only data by non-signatories, which allows non-signatories to continue accessing the negative-only data pool.

Consistency: This requires that credit providers contribute the same information to all credit reporting bodies with which they have service agreements, and that credit providers contribute all of the credit information across each of their consumer credit portfolios. This encourages the credit reporting bodies to compete on matters of price and service, rather than which body holds more data. Greater consistency in data held between credit reporting bodies is of particular importance to smaller credit providers who are less likely to deal with multiple bodies, and for consumers so that credit reports obtained from different bodies are more comparable.

Enforceability: The PRDE incorporates a compliance system that gives signatories confidence that its requirements can be enforced through a process that is independent of the bilateral contractual relationship between a credit provider and credit reporting body. The PRDE compliance system gives smaller credit providers the same standing and rights as the largest credit providers.

iii. Consumer rights and protections

The draft Bill does not directly impact on consumer rights and protections in respect of credit reporting as it simply requires information already able to be entered into the credit reporting system to be supplied. Rather, *Part IIIA* of the *Privacy Act* (Part IIIA), and the *Privacy*

(Credit Reporting) Code (CR Code), a legislative instrument made under the Act, set out the rights and protections afforded to consumers in respect of the collection, use and disclosure of credit reporting information.

Compared to the other forms of personal information – including financial information that is collected or shared outside the credit reporting system – Part IIIA strictly limits how and what credit reporting information may be collected, used and disclosed, and provides customers clear rights to correct and complain about data that may be wrong. Credit providers must clearly notify a consumer at the time the consumer applies for the credit about how their information will be shared with a credit reporting body, and explain their rights to access and correct that information (if necessary).

Given the protections in Part IIIA and the CR Code, it is not possible for a customer's data to be being unwittingly, and inappropriately, shared with third parties in the way that has recently been uncovered in relation to the data of millions of Facebook users. In addition, consumers have the protection of being able to take concerns with the handling of their credit reporting information to either the Office of the Australian Information Commissioner (OAIC), the independent government agency that oversees the credit reporting system, or to an external dispute resolution scheme – credit providers and credit reporting bodies must, as a condition of participating in the credit reporting system, be members of a scheme recognised by the OAIC.

Some of the key consumer rights and protections include:

Consumers' credit data can't be accessed or disclosed unless permitted: Part IIIA strictly limits the types of businesses that may share or access credit reporting data. A credit provider that obtains credit reporting information from a credit reporting body is prohibited from disclosing that data, or anything derived from the data, to another person unless permitted by Part IIIA. Unlike other forms of personal information, the credit provider cannot obtain the consumer's consent to disclose the credit reporting information to another person for purposes not contemplated by Part IIIA.

Consumers' credit report can't be used for marketing: The credit provider's use of credit reporting information is strictly limited by Part IIIA and the CR Code. As with the restrictions on disclosure, the credit provider cannot use the data for non-permitted purposes, even with the consent of the consumer. As an example, a credit provider must not use credit reporting information obtained from a credit reporting body for any marketing purposes.

Consumers' right to obtain credit report: Consumers have the right to get a free copy of their credit report each year from each credit reporting body. Determinations by the OAIC have confirmed the absolute nature of this right. In addition, the importance of the right has recently been demonstrated by the decision of the Australian Competition and Consumer Commission to take court action against a credit reporting body for allegedly failing to give full effect to the right.

Consumers' right to correct data: Consumers are given clear rights to request that data that may be inaccurate, out-of-date, incomplete, irrelevant or misleading be

corrected. The consumer may request any credit provider or credit reporting body to correct such data (even if that credit provider or credit reporting body did not create the data) and, once requested, the credit provider or credit reporting body is under time limits to correct the data or provide reasons why it has not been corrected. The consumer may then complain to the relevant external dispute resolution scheme.

In relation to some particular forms of credit reporting information, Part IIIA and the CR Code establish additional consumer protections. For example, a credit provider is under strict notification and timing obligations before it can disclose a default to a credit reporting body.

Given the detailed and extensive consumer protections already contained in Part IIIA and the CR Code, we consider that the draft Bill does not raise additional issues in relation to consumer rights.

iv. Data Privacy

Part IIIA requires both credit reporting bodies and credit providers to take reasonable steps to protect credit reporting information from misuse, interference and loss, and from unauthorised access or disclosure.

The draft Bill will require a more robust level of security at credit reporting bodies than exists currently. The Bill adds a new layer of protection, by amending the *Privacy Act* to require credit reporting bodies to store comprehensive credit information in Australia or to use a cloud service certified by the Defence Department. Credit providers must be satisfied the credit reporting body meets those new *Privacy Act* requirements.

For background, it is worth exploring the issue of data security. The overwhelming cause of data security breach is identity theft. [10] Identity data theft includes the theft of name, address, date of birth, drivers licence details. In fact, 74 percent of worldwide data breaches in the six months of 2017 related to identity theft, with a further 13 percent of breaches related to theft of financial account information, such as credit card numbers. It is worth noting that Australian credit providers are not permitted to provide full credit card numbers to credit reporting bodies.

Under a mandatory comprehensive credit reporting environment, existing consumer records will not be created, rather they will be expanded. Most consumers will already have identity information held by a credit reporting body. Anyone who has applied for credit; including loans by banks and other finance providers, such as in-store finance or motor vehicle finance; a telecommunications service, such as a mobile telephone; or access to an energy supplier, will have a record at a bureau.

There are very strict data risk protections in Australia. For example, the major banks are required to meet APRA's Prudential Standards for managing data risk, CPG 234 and 235, which include the need to encrypt data held at rest and in transit.

[10] See http://breachlevelindex.com/data-breach-library

As a matter of policy, credit providers (especially the majors) embed data security standards into contracts with their suppliers, including credit reporting bodies. Contracts are not finalised until these standards are accepted. The standards deal with the individual requirements of each bank, taking into account their own technology infrastructure and the nature of services procured from individual credit reporting bodies. Adherence to these requirements are audited by the banks, in general annually. The effect of this is to ensure that the highest standard set by a bank becomes the minimum standard a credit reporting body needs to comply with.

v. Hardship

Although it is not dealt with directly in the draft Bill, ARCA welcomes the Government's announcement that they will review the operation of the financial hardship arrangements, including looking into the intersection between the relevant provisions of the *Privacy Act* and *National Credit Code* (which is a schedule to the *National Consumer Credit Protection Act*).

ARCA believes that the Government review is an ideal opportunity to ensure that consumers experiencing financial difficulty are protected, and the tools available to lenders to lend responsibly are strengthened. We note, however, that the review is due to report its recommendations in late 2018. As noted below, in the absence of a means in credit reports to identify consumers who have experienced hardship, the repayment history information reported for those consumers could be misleading. Given this issue will become more significant as the number of credit providers supplying comprehensive credit data increases, we strongly urge that this review be brought forward.

For background, industry recognises customers may face circumstances of hardship that impact their ability to make loan repayment. Industry has various flexible and pro-active responses to help customers during those periods and may provide temporary or on-going payment arrangements, depending on the consumer's circumstances. One response to consumers facing hardship is governed by the process outlined in the *National Credit Code*. In this case, the customer can notify the lender that they are in hardship, and the lender may agree to vary the terms of the existing contract. Other forms of hardship arrangements are informal, for example a lender may grant an indulgence to the borrower but not vary the terms of the existing contract.

The independent government agency which oversees the credit reporting system, the OAIC, has recently published guidance on how 'repayment history information' is to be reported if a customer and their lender agrees to a 'hardship arrangement' in relation to a loan. ARCA and industry welcomes the legal clarity given by the OAIC's guidance. However, we believe that the current legislative framework could be improved to better protect individuals who are experiencing financial difficulty and to provide lenders the tools with which to prevent such individuals from getting into further financial difficulty.

One potential solution to improve the protection for consumers in financial hardship, has already been developed by ARCA and includes the introduction of additional data in the credit reporting system to identify that a consumer has asked their credit provider to change their credit contract on the grounds of financial hardship. Under ARCA's solution, additional data would identify whether a consumer's payment obligations have been varied on the grounds of hardship – this would differentiate between repayment history that is being reported for a varied contract, compared to repayment history being reported for the

consumer's original payment obligations. This will better enable credit providers to lend responsibly and would reduce the risk customers who may be experiencing financial difficulty find themselves in a worse position.

To be clear, the current credit reporting system (even with the move to comprehensive credit reporting) does not meet the needs of industry or consumers in relation to how, and whether, hardship is reflected. Hence, ARCA and its Members welcome the recent announcement by the Attorney General of a review into how hardship arrangements intersect with the credit reporting system. We are committed to finding a solution for reporting hardship and are looking forward to working collaboratively with government and all stakeholders for the necessary legislative reform that will benefit all.

Finally, thank you again for the opportunity to make a submission regarding this Bill whose passage it critical for the effective operation of consumer lending in Australia.

If you have any questions about this submission, please feel free to contact me on

Yours sincerely,

Mike Laing
Executive Chairman