

Senate Economics Legislation Committee
ANSWERS TO QUESTIONS ON NOTICE
Treasury Portfolio

Inquiry into the Comprehensive Credit Reporting Bill 2018
2018 - 2019

Division/Agency: Financial System Division

Topic: Inquiry into the National Consumer Credit Protection Amendment
(Mandatory Comprehensive Credit Reporting) Bill 2018 [Provisions]

Reference: Written

Senator(s): Chris Ketter and Jenny McAllister

Question:

1. Please provide a response to the NZ Privacy Commissioner report generally.
(<https://www.privacy.org.nz/assets/Uploads/Report-on-Review-of-CRPC-Amendments-No-4-and-No-5-PDF.pdf>)
 - a) Please also provide a specific response to each of the following paragraphs:
 - “The picture that has emerged in the review shows some evidence of benefits to participants in the credit reporting system but, so far, limited evidence of benefits to individuals, the community and the economy.”; (page 8) and
 - “The intrusion of CCR beyond the negative credit reporting system that has existed for decades cannot be justified simply by the interests of lenders. While reverting to the former negative system - which principally impacted individuals who had failed to meet their credit obligations rather than all credit active New Zealanders – would be one possible response to a failure of CCR to deliver individual and community benefits. A much better outcome would be for the credit industry to act decisively to demonstrate that it can deliver on such issues as consumer choice, competition, responsible lending, improved identification practices, quotation enquiries, lending to under-served communities and public education.(page 9 & 10)
 - b) Is it fair to say that in the New Zealand context – that CCR has brought efficiencies to the credit market, but the distribution of these benefits has accumulated to credit providers and credit reporting bodies, with little demonstrated benefits to either individuals or the community?
 - c) Does Treasury have any reflections on whether it is likely that Australia could see similar results or not?
 - d) Given these results, what aspects of CCR will Treasury be monitoring if this legislation is passed?
2. Use of data

- a) What protections / safeguards are in place about how CCR data can be used?
 - b) If a credit reporting body was to analyse CCR related data and then on-sell anonymised data or other “insights” to third parties, are there any protections in this legislation or in existing legislation for that kind of activity? Please outline these protections if they exist.
 - Would these kind of arrangements need to be disclosed to anyone?
 - E.g. Credit providers who supply the data, regulators
 - Under what circumstances do they need to be disclosed to these parties?
 - How much thought generally have you given to the issue of how credit reporting bodies might legally use CCR data (or data derived from the CCR data), combine it with other data, and find ways to generate revenue out of it?
 - Is there anything stopping a credit reporting body partnering with Google, Facebook and finding legal ways to combine CCR data with other data to help companies improve their marketing for example? What would stop this from happening? Or at the very least, if it does happen, will there be a degree of awareness or oversight?
 - c) Credit providers & data
 - Under what circumstances could a credit provider request a report on an individual?
 - Only if the individual approaches the member and requests credit?
 - Could a credit provider pay for a report if the member has had contact with, but not received a request for credit from, a credit provider?
 - Could a credit provider purchase a report with no prior contact of the individual? (if so, could a credit provider purchase credit reports on everyone in Australia?)
 - Could direct “cold call” marketing occur as a result of this legislation? Under what circumstances? What might the outcomes be?
 - Given “credit scores” developed by credit reporting bodies are a derived number based on CCR data, is it possible that a credit provider could request a credit reporting body to contact individuals (e.g. via a mail out) within a given credit score range and invite them to apply for a particular credit product? Can this happen today? Could this happen if the CCR legislation is passed?
 - Could credit providers conceivably store credit reports on their own computer systems? Or are there electronic measures that stop the copying/storage of these reports?
 - Can these reports be passed between employees within credit providers in your opinion? For what purposes?
3. Regulatory Environment

- a) What expectations does Treasury have in which agencies will be regulating and enforcing the CCR scheme?
- What does Treasury understand OAIC's role to be in terms of regulating and enforcing comprehensive credit reporting?
- What does Treasury understand ASIC's role to be in terms of regulating and enforcing comprehensive credit reporting?
- Are there any other regulators who have an interest/responsibility that we need to be made aware of?
- b) Would it be fair to say that much of the regulation/enforcement will be up to the OAIC?
- If this legislation was passed, what proactive enforcement do you expect of the OAIC?
 - How frequently would you expect auditing to occur on credit reporting bodies? What about credit providers?
 - What should the OAIC look for? Be specific.
 - Will things like selling/providing data to third parties who shouldn't be allowed access be included in the type of auditing that you would expect to be carried out?
 - What powers does the OAIC have to gather information? What are the penalties if the entity does not comply, or not comply in a full and timely way with the OAIC? Does Treasury believe this is sufficient?
 - If risks were identified – what powers does the OAIC have to make sure the entities address the risks? What happens if an entity does not comply in a timely way, or to the degree expected? Does Treasury believe this is sufficient?
 - Does Treasury hold any concerns about limitations the OAIC might have in proactive enforcement (e.g. legislative limitations) that you would like to mention to this committee in the context of considering the passage of CCR legislation?
- On the reactive (breach/non-compliance) aspect of regulation:
 - Has Treasury conducted any reviews of both ASIC and the OAIC in the regulation of financial data? Does Treasury believe the allocation of responsibilities, enforcement powers, resourcing and penalties for each of ASIC and OAIC are properly designed?
 - What penalties would exist in the event that, after this legislation was passed, that a credit reporting body was responsible for a data breach leading to CCR data to enter the public domain?

- Did Treasury consider either setting additional offences and penalties or increasing existing penalties for these kinds of breaches? What level/s were considered?
- c) Resourcing
- Do you believe the OAIC's and ASIC's resourcing and powers (number of staff, expertise of staff etc.) is sufficient to enforce this legislation and existing legislative requirements?
 - If it turns out to be the case that the regulators are not properly equipped, would Treasury agree that a lack of enforcement or looking for non-compliance reduces the value of consumer protections that are contained within legislation? And given it is financial data that is being regulated here, that the stakes are very high?
4. Other
- a) In the event that one of the credit reporting bodies is sold or becomes insolvent, what happens to the data? Can it be sold?
5. Senator McALLISTER: Can you take on notice this question: will the data that is provided to credit bureaus be able to be anonymised and combined with other datasets to produce products for sale or is it quarantined for very specific purposes around credit checking? Do you understand the question I'm asking?
6. Senator KETTER: You indicated that in the consultation process you've heard from some of the participants about compliance costs with the new regime. Have they given estimates as to what the compliance costs will be?
7. Senator KETTER: If credit-reporting bodies did use that data in that way, would credit providers be made aware that their data was being used? In this example here, we've got Nine Network and Equifax. If in the future they're using data it may well be anonymised and corralled in some sort of way. Will the actual credit providers be informed about how their data is being used?

Mr Kelly: I think we'd have to take that on notice too, Senator.

Senator KETTER: Do credit providers have any rights over how credit-reporting bodies use their data?

Mr Kelly: This gets to one aspect of the legislation that, to some extent, will be dealt with by regulation. As other witnesses may have explained, there are principles in the industry framework around comprehensive credit reporting, around reciprocity as well as others such as consistency. Reciprocity basically says someone can't use that data unless they're also providing the same data that they hold. That's one part of it.

Senator KETTER: That's one part of it, but that doesn't go to the issue of what right the actual lender has as to how their data—rather, whether they cease to have any rights.

Mr Kelly: I think that's the fundamental right. I'll just ask colleagues in Canberra if they'd like to add to that.

Senator KETTER: Do credit providers have any rights over how the credit-reporting bodies use their data?

Mr Namgyal: It may be a question that we need to take on notice. In terms of the data that's being supplied, it would ultimately be the individual's data and not the credit provider's. The framework within the Privacy Act would effectively set the framework for how that data should be used and disclosed.

8. Senator KETTER: Can you tell me what stops a credit-reporting body partnering with Google or Facebook and finding legal ways to combine CCR data with other data to help other companies improve their marketing?
9. Senator KETTER: If they (credit provider) have that report on their own system, what are the restrictions around them in terms of sharing that information?
10. Senator KETTER: If the data is kept within a credit provider, what are the limitations within that credit provider? Can those reports be passed between employees of that credit provider?
11. Senator KETTER: If we've got one part of the bank engaged in other activities—perhaps marketing activities—what's to stop the bank from utilising that information? It's being held within the one credit provider.

Answer:

Question 1

The merits of comprehensive credit reporting (CCR) have been the subject of a number of Australian inquiries that have examined a wide range of evidence as to the benefits of CCR, including overseas studies. In particular, the development of a comprehensive credit reporting framework in Australia followed recommendations made by the Australian Law Reform Commission in 2008 in ALRC Report 108: For Your Information: Privacy Law and Practice. CCR was further considered by the 2014 Financial System Inquiry and the Productivity Commission's 2017 inquiry into Data Availability and Use.

The New Zealand Privacy Commissioner's report 'Comprehensive Credit Reporting Six Years On' was released on 10 April 2018. The report notes that participation in the New Zealand system is incomplete and that benefits may not fully emerge until the data is rich and credit providers are not only contributing information but changing their behaviour in reliance upon information they extract and analyse.

Under the Bill, an independent statutory review is required to be completed by 1 January 2022. The Explanatory Memorandum, at paragraph 1.36, notes matters that the review could be asked to consider.

Question 2

This question falls within the Attorney-General's portfolio. We understand that the Attorney-General's Department has separately responded to this question from the Committee.

Question 3

The Australian Securities and Investments Commission (ASIC) and the OAIC will be the regulatory bodies responsible for the enforcement of the provisions in the Bill.

ASIC is responsible for ensuring that the licensees have provided the required data within the prescribed timeframe. ASIC will also be responsible for ensuring that credit reporting bodies do not share the data in a way that is inconsistent with the regulations. The *National Consumer Credit Protection Act 2009* (Credit Act) includes a number of powers to assist ASIC in its role, including enforcement, information gathering and investigative powers.

The OAIC is responsible for making sure that the obligations set out in Part IIIA of the Privacy Act are met, such as use and disclosure, security arrangements, quality of data and data retention periods. The draft legislation does not alter the OAIC's existing functions.

Question 4

This question falls within the Attorney-General's portfolio. We understand that the Attorney-General's Department has separately responded to this question from the Committee.

Question 5

Section 20M of the Privacy Act generally prohibits a credit reporting body from using or disclosing de-identified credit information, except in the case where a credit reporting body uses and discloses de-identified information for the purposes of conducting research in relation to credit, and only if the credit reporting body complies with any rules made by the OAIC in relation to these uses and disclosures. The creation of any rules and the regulation of research conducted using de-identified credit information is a matter for the OAIC to consider. The current rules – the *Privacy (Credit Related Research) Rule 2014* – can be found on the OAIC website at: <https://www.oaic.gov.au/agencies-and-organisations/legally-binding-guidelines-and-rules/privacy-credit-related-research-rule-2014>.

Question 6

The regulatory burden to business, community organisations or individuals has been quantified using the Australian Government's Regulatory Burden Measurement framework. Treasury estimates that these reforms will have an average annual regulatory cost of \$8.2 million.

Question 7

In relation to Channel Nine and Equifax, Treasury understands that the arrangement does not involve the use of credit reporting information.

Any private contractual arrangements regarding the use of credit information must comply with the Privacy Act.

Question 8

See answer to Question 5.

Question 9

Credit providers can store credit information about individuals received from a credit reporting body ('credit eligibility information') on their own systems, and use that information for purposes that relate specifically to the purpose that the information was disclosed to them for.

Question 10

See answer to Question 9.

Question 11

The use of credit information about individuals received by a credit provider from a credit reporting body ('credit eligibility information') is strictly limited to the purposes set out in section 21G and 21H of the Privacy Act. The use of credit eligibility information for marketing purposes is not a permitted use.