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Senate Standing Committed on Economics
PO Box 6100
Parliament House
CANBERRA ACT 2600

20 April 2018

By email: economics.sen@aph.gov.au

Dear Sir/Madam

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

The Australian Finance Industry Association (AFIA) welcomes the opportunity to comment on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* (the Bill).

AFIA is well place placed to advocate for the finance sector given our broad and diverse membership of over 100 financiers operating in the consumer and commercial markets through the range of distribution channels including digital access. More detail on AFIA is available from: www.afia.asn.au.

A significant number of our Members in both the consumer and commercial finance markets rely upon services provided by (consumer) credit reporting bodies (CRBs) as permitted by the Privacy Act 1988 to facilitate access to finance underpinned by sound credit assessments. This will increase with moves to mandate comprehensive credit reporting (CCR). Although we note that the current legislative restrictions for access by commercial credit providers to repayment history information (the data set with the most predictive power) is limited.

AFIA's notes a key intention of the Government in mandating CCR is to increase competition and provide Australians with better access to finance. AFIA supports the Government's objective. To assist the Senate Economics Committee's review of the Bill, AFIA raises two key concerns with the Government's proposed implementation of its policy:

1. Reporting of a customer's difficulty meeting agreed repayment schedules a result of financial hardship: The need to provide a means for hardship to be reported where a customer is, or has been, in financial difficulty to protect the customer and ensure AFIA members and other financiers have relevant and important information to appropriately assess the future provision of finance and do not inadvertently exacerbate the customer's situation
2. Scope: ensuring the Bill operates in a targeted and appropriately balanced way that achieves the policy objective without operating to mandate CCR across the whole consumer finance sector,

regardless of the size, credit decisioning policies and management and the business resource capacity of individual credit providers.

AFIA believes addressing these concerns before the Bill proceeds will assist in the Bill meeting its desired policy objectives. Further detail follows.

1. Hardship reporting

The Bill does not address a significant issue relating to the reporting of repayment history information (RHI) of a customer where the customer experiences financial difficulty and seeks and obtains a variation of the schedule for repayments from what was originally agreed (also known as financial hardship). This is a critical issue for consumers and industry alike and should be resolved as a priority.

Credit providers regularly work with their customers when they experience periods of financial difficulty to provide relief and a way for the customer to 'get back on track'. We believe the issue of how these situations should be reported needs to be addressed so that an individual's credit report remains a clear and objective historic record of all facts relevant to future consumer credit decisions.

The omission of reporting customers in hardship devalues the credit reporting process and potentially creates risk of inadvertent irresponsible lending to consumers. In the absence of the report reflecting the financial difficulty management, participants in the credit reporting system have no knowledge of the fact that the consumer is meeting their repayments but only because the repayments have been managed by the consumer credit provider in a way that assists overcome the financial difficulty that the customer has experienced.

It is not correct that a credit report should display a pattern of historic repayment that shows a consumer that has experienced financial difficulty but subsequently paid down arrears because of a windfall financial gain (e.g. through winning the lottery) being reported the same as one that has paid down arrears through financial hardship management assistance offered by the credit provider.

Reporting these two very different situations in the same manner creates the environment for AFIA members and other incoming financiers to provide finance to customers in financial difficulty with the flow on detrimental financial impacts for those customers; an outcome that should be avoided for consumers, industry and Government alike.

We note concerns raised from representatives of consumers, including consumer advocacy groups, that the credit reporting system should not cause customers to stop pursuing financial hardship management solutions with their financiers should they get into financial difficulty. We share their concern and our members are equally keen to work with customers in financial difficulty to be able to continue to meet their obligations including through varying the scheduled repayments. This outcome is far preferable to a customer not contacting the financier and making no payments with the likely recovery and enforcement action that would flow.

AFIA sees a balance can be achieved that operates to ensure the customer uses his or her statutory financial hardship right and the credit reporting system is able to reflect the outcome to ensure prudent lending decisions that appropriately take note of the customer's particular financial circumstances going forwards. A customer that has been in financial hardship and worked with the financier to continue to repay is substantially more likely to be offered credit in the future than one that has stopped paying and had recovery action taken.

We note that the Government has asked the Attorney-General to lead a review on the operation of hardship arrangements in the context of the Privacy Act credit reporting provisions and advise whether any reforms are necessary in a Report to be submitted late 2018. This will potentially leave a significant amount of time between the start of mandatory CCR and changes being implemented so that credit providers can include in the credit reporting system information about customers in financial hardship. We believe that the Government should expedite the review into hardship reporting with the purpose of allowing credit providers to transparently report instances of customers in hardship.

The Government should also at the earliest opportunity consult with AFIA and other key stakeholders in the finance industry to identify the most appropriate solution. We also believe that there should be consideration of not mandating the reporting of accounts in hardship (for RHI purposes) until this process has been agreed and implemented. This will prevent the detrimental impacts as identified above.

AFIA recommends:

1. recommends that the Government expedite the review into hardship reporting with the purpose of allowing credit providers to transparently report instances of customers in hardship
2. urges the Government to consult with AFIA and other key stakeholders in the finance industry to develop the most appropriate solution for hardship reporting
3. consider the merits of not mandating the reporting of accounts in hardship (for RHI purposes) until a process for hardship reporting has been agreed and implemented.

2. Mandating comprehensive credit reporting

It is AFIA's preferred position that the mandating of CCR not to be a one-size fits all approach. The market is complex with a range of participants that differ in size, data-holdings, product-offerings, distribution channels and customer demographics. The Government policy on mandatory CCR should appropriately take this into consideration. Based on feedback from our members, a policy that targets and mandates disclosure by participants that are holders of significant levels of consumer CCR data will organically see the balance of participants move to participate.

Until only 4 years ago, comprehensive credit reporting had been expressly prohibited since 1992 under the Privacy Act. During the prohibition, credit providers managed credit and pricing risks through then available information, investing in their businesses knowing the law prohibited anything more. Many credit providers do not have internal resources readily available to engage in CCR needing a significant lead time to make the necessary capital expenditure in IT, credit criteria redevelopment and retraining. Many of these would not have deep IT resources readily available and would rely on third party systems providers to develop and supply the relevant systems support. If the Bill is to proceed, its scope should clearly ensure an approach that reflects this.

As observed earlier, AFIA Membership comprises a range of businesses, with significantly differing levels of available resources and expertise. Mandating involvement has significant financial and commercial implications for those less well resourced, particularly when three credit reporting bodies are involved. We also note that mandating participation on smaller credit providers would see significant cost imposed without an offset enhancement in the credit reporting system of the data that they would be contributing. We therefore recommend the Bill's scope should reflect this.

The Bill allows for regulations to be made that could mandate credit providers with assets of $100B or less to disclose CCR into the credit reporting system. Based on our reasoning outlined above, AFIA encourages the Committee to either recommend amendment of the regulation-making power to provide further criteria to ensure it is not used with the result of a one-size fits all approach for the balance of the industry beyond the major data-holding participants or remove it; allowing the balance of participants to join organically in the system. This would achieve the policy objective underpinning the Bill but in a way that appropriately balances the impacts for industry participants. Should the regulation-making power be retained and utilised by a Government in the future, AFIA recommends it should include a reasonable transition period of three years to allow a streamlined implementation.

On a related and more specific matter, AFIA notes that as currently drafted the Bill could potentially capture some unlicensed credit providers. If the Bill is to proceed, the combined concepts of 'credit provider' and 'eligible licensee', respectively in cl 2 of Sch 1 of the Bill and proposed s 133CN(1), would capture a credit providing business holding an Australian Credit Licence. However, some credit providers are exempt from licensing (for example, because they satisfy the criteria for a 'special purpose funding entity' under the NCCP Regulations and provide credit through a service agreement with a business which holds a credit licence authorising it to engage in credit providing on behalf of the credit provider). While this does not affect the initial scope of the Bill, it may have implications should a future Government prescribe additional businesses to be eligible licensees.

AFIA recommends:

4. the authorisation in the Bill to be able prescribe a licensee as an 'eligible licensee' under the proposed s 133CN(1)(a) of the Bill should exclude small to medium sized businesses.
5. the Bill specifically provide for small to medium sized businesses to be given the ability to voluntarily opt in to comprehensive credit reporting, should they wish, without the regulatory structure and burden the Bill creates when mandating involvement
6. the authorisation in the Bill to be able prescribe a licensee as an 'eligible licensee' under the proposed s 133CN(1)(a) of the Bill should be constrained to apply a minimum implementation time of 3 years
7. review the Bill to ensure it also addresses circumstances where credit providers are exempt from holding an Australian Credit Licence.

3. Other points to consider

We have undertaken considerable dialogue with our Members on this topic. The following additional points have emerged that the Committee may like to consider:

- Providing access to CCR to organisations who only lend to micro or small businesses (at present this is not possible under the Privacy Act credit reporting provisions nor under self-regulatory industry-reciprocity agreements). This outcome would be consistent with other markets, including the US, and is an important aspect to fostering competition and supporting access to capital for these businesses
- Ensuring that the Bill provides for the following exemptions from mandatory CCR. Accounts that:
    - are in dispute – disputed accounts increase the potential that any credit reporting may subsequently prove to be in error. Credit providers spend large amounts dealing with

contested credit listings (through both internal dispute resolution and through ombudsman schemes) and mandatory reporting should not exacerbate this.

- are in hardship or subject to repayment forbearance – from a practical perspective, creditors will regularly exercise forbearance where they consider it fair and reasonable and after considering the customer's situation. In such circumstances, the credit provider may also consider that reporting such forbearance may unfairly affect the consumer so allowing credit providers discretion to exclude such accounts from reporting should be considered.
- have been accelerated (subject to a NCC section 88 notice) and / or are subject to an unpaid default listing – In these circumstances, there is no longer any periodic repayment from which to determine arrears status and the entire balance is immediately due and payable. While there may be some repayments from time to time, it would be burdensome and inefficient to provide updates on the large number of historic accounts in this situation. Experience from the US suggests that the reporting of such repayment information may facilitate the activities of unscrupulous lenders seeking to refinance such debts at high costs with the promise of a 'clean' credit file. In addition, in the US, repayment information reported on one accelerated debt has acted as a flag to other creditors who may then pursue legal enforcement to displace the creditor being paid and assume a preferential position. Providing discretion to exclude such accounts will minimise the use of legal enforcement and continue to deliver positive consumer outcomes.
- Are subject to domestic violence orders.

- Clarifying the section on disclosure which could potentially duplicate provisions in the PRDE leading to some requirements being legislated and some being in the industry code.
- A more appropriate way of ensuring timely reporting can occur that allows for load balancing – the current requirement to provide data updates within 20 days of the end of the calendar month restricts data loads to two thirds of the month and restricts the ability of credit providers to align data supply to cycle dates through the month.
- Supporting the approach taken by the exposure draft that allows for credit reporting to evolve as technology develops and ASIC's ability to determine data supply and technical standards which could be subsequently transferred to a data standards body in the future (similar to what is proposed for open banking in the Report into Open Banking in Australia).

Further consultation

Should the Committee wish to discuss our recommendations or require additional information, please contact me at [redacted] or Alex Thrift, Economic & Policy Senior Adviser at [redacted] or both via [redacted]

Kind regards

[redacted]
Helen Gordon
Chief Executive Officer