

Senator Jane Hume
Chair
Senate Economics Legislation Committee
Parliament House
CANBERRA ACT 2600

25 May 2018

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

Dear Chair

Written Questions on Notice – Inquiry into the NCCP Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018

The Australian Finance Industry Association [AFIA] thanks the Committee for the opportunity to appear regarding its Inquiry into the NCCP Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 [the Bill]. We also welcome the further opportunity to inform the Committee's consideration by responding to questions on notice raised with us by Senator Chris Ketter. We thank the Committee also for the additional time provided to respond.

Question 1: Use of data

a) What will be the cost that your members will have to pay to access these reports?

Our members, like others that access the credit reporting system, each has its own relationship with one or more of the credit reporting bodies that operate in Australia. These arrangements are commercial-in-confidence which limits the ability of AFIA to have visibility of costs or any other aspects of these agreements.

b) Under what circumstances could one of your members request a report on an individual?

i. Only if the individual approaches the member and requests credit?

The Privacy Act places tight controls around the handling of information in the credit reporting system. Breach of the requirements opens our members to significant penalties, in addition to potentially more significant reputational damage that may flow.

More specifically, under Part IIIA of that Act, a credit provider can only have an individual's credit reporting information disclosed to it by a credit reporting body [CRB] in a limited number of circumstances, in particular to:

- assess an application for consumer credit made by the individual
- enable it to collect any overdue amounts that relate to the credit provided by the credit provider
- assess an application for commercial credit made by the individual (only after the individual has given consent for their consumer report to be used for this purpose)

- enable it to collect any overdue payments that relate to commercial credit provided by the credit provider but only where the individual has consented to this purpose
- assess an individual's application as a guarantor but only where the consumer has consented to this purpose.

Breach of this provision would open the CRB to a significant civil penalty (potentially a maximum of \$2.1M).

We also note that a credit provider can only on-disclose credit reporting information it has collected from a CRB in very limited circumstances. Breach of this also opens the credit provider to a significant civil penalty (potentially a maximum of \$2.1M).

ii. Could a member pay for a report if the member has had contact with, but not received a request for credit from, an individual?

We refer to our response above relating to the tight controls around disclosure of credit reporting information and significant risk for breach.

iii. Are there any circumstances where a member of your organisation could purchase a report on an individual with no prior contact of the individual? (if so, could someone conceivably purchase credit reports on everyone in Australia?)

We refer to our response above relating to the tight controls around disclosure of credit reporting information and significant risk for breach.

iv. Could direct "cold" call marketing occur as a result of this legislation? Under what circumstances?

The use of credit reporting information by CRBs is tightly controlled under the Privacy Act, in particular Part IIIA as noted above. This includes a provision that expressly prohibits the use or disclosure of credit reporting information by a CRB for direct marketing purposes. Breach attracts a significant civil penalty (a maximum of \$2.1M).

In addition to the controls around the handling of credit reporting information for direct marketing, in March 2014 a further amendment to the Privacy Act was made to the more general person-information handling obligations that also apply to CRBs and credit providers in their handling of information that is not regulated under Part IIIA namely APP 7 - Direct Marketing. APP7 details a compliance framework that must be followed with risk of breach also carrying with it a significant civil penalty.

prohibition in relation to use for direct marketing. Part IIIA of the Privacy Act 1998 prohibits CRBs and credit providers using credit reporting information for direct marketing, including cold calling.

Both these outcomes reflect the culmination of extensive consultation in the development of the amendments that commenced from March 2014 in which the interests of all stakeholders including industry and consumer advocates were taken into account.

As we understand, the Bill before the Committee does not change the operation of these provisions of the Privacy Act.

We also note restrictions in other laws that impact a credit provider's ability to engage in cold call marketing. For example, amendments recently made to the NCCP Act to prohibit the unsolicited marketing of credit card limit increases. Also more generally for financial products and services, the anti-hawking provisions in the Corporations Act (sections 736, 992A and 992AA) which, in general terms, provide that a person must not offer financial products for issue or sale in the course of, or because of, an unsolicited meeting or telephone call with a retail client.

- v. Given "credit scores" developed by credit reporting bodies are a derived number based on CCR data, is it possible that one of your members 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?

We note our comments above about the significant and tight controls under the Privacy Act, including Part IIIA, which are also relevant to the ability of the CRB to use credit reporting information that it holds to generate or derive credit scores and, where the derived credit score information is also held by the CRB, its' subsequent use.

We also note that under Part IIIA, a CRB is permitted to use credit reporting information to pre-screen. As noted in the Explanatory Memorandum that accompanied the Bill with the amendments that took effect from March 2014, *'pre-screening is a direct marketing process by which direct marketing credit offers to individuals are screened against limited categories of credit information about those individuals to remove individuals from direct marketing credit offers based on criteria established by the credit provider making the offer, before the offers are sent.'* A key objective of this provision was to assist credit providers ensure financially vulnerable customers, in particular, do not receive offers potentially increasing their exposure to credit and financial difficulties. The pre-screening process that has to be followed is prescriptive and breach

carries risk of significant penalty (eg maximum fine of \$2.1M). Individuals also have the ability to request a CRB not to use their credit reporting information for a pre-screening purpose.

The permission relating to pre-screening also reflects the outcome of significant and considered debate of industry and other key stakeholders including consumer advocates in the development of the amendments to Part IIIA that commenced in March 2014.

- vi. **Once a report is paid for and received, how is it transmitted? E.g. will it be emailed as a pdf?**

The manner in which credit reporting information is disclosed from a CRB to our members is also a matter each member is likely to negotiate as part of the agreement it has with the CRB. AFIA is not in a position to provide further specifics that would assist the Committee with this question.

However, we note there are strict controls to ensure the secure-disclosure of the information from the CRB to the credit provider under the Privacy Act, including Part IIIA. Further, that the Bill also includes additional protections (eg CRBs must either store the regulated data in Australia or using a service that is listed by the Australian Signals Directorate of the Defence Department as a Certified Cloud Service).

- vii. **Could one of your member organisations store this credit report on their own computer systems? Or are there electronic measures that stop the copying/storage of these reports?**

It is possible for a credit provider to store credit reporting information disclosed to it by a CRB in the limited permitted circumstances noted earlier in electronic form on their system. However, there are strict controls in the Privacy Act, in particular Part IIIA, imposed on the credit provider in relation to how that information is used, secured and when it must be destroyed or de-identified once the provider no longer needs the information for the use it was collected.

- viii. **Can these reports be passed between employees of your member organisations?**

As noted above, the use of credit eligibility information (ie credit reporting information disclosed by a CRB and held by a credit provider) including between employees of our members (or other credit providers) is strictly controlled by the Privacy Act, in particular Part IIIA.

- ix. **Can the data contained in these reports be sent on to third parties? If so, under what circumstances?**

As noted above, the disclosure of credit eligibility information (ie credit reporting information disclosed by a CRB and held by a credit provider or information derived from that credit reporting information and held) from our members (or other credit providers) to third parties is strictly controlled by the Privacy Act, in particular Part IIIA. For example, a credit provider is permitted to disclose credit eligibility information to another credit provider provided the prescribed process is followed (eg the individual must give their express consent to the disclosure of the information to another credit provider).

- x. **Can any derived data (that is, data derived from information contained in credit reports) be sold/sent to third parties? If so, what kinds of information? Under what circumstances?**

Under the Privacy Act information derived from credit information or credit reporting information and held by either the CRB or a credit provider is treated in the same as credit information or credit reporting information and can only be disclosed in limited permitted circumstances or for permitted uses.

As noted in our responses at the public hearing, repayment history information has an additional restriction generally requiring the recipient to hold an Australian Credit License as a further pre-condition to disclosure by the CRB.

Question 2: Expansion to small credit providers

- a) **You have also made comments in your submission that you want sufficient time for small and medium members to be able to transition to CCR if a future Government were to lower the \$100 billion asset threshold to capture more credit providers.**

- i. **What “criteria” do you have in mind when trying to come up with a framework that avoids a one-sized fits all approach?**

As stated to the Committee, AFIA’s preferred position is that the Government approach is not to mandate disclosure of the additional five datasets (commonly referred to as CCR) across the sector as a one-size fits all approach. We believe restricting mandatory participation to large ADIs with the outcome of a critical mass of credit information being disclosed into the credit reporting system together with rules around reciprocal sharing will see the number of participants outside the mandated large ADIs grow organically over time. Non-mandated entities will want to participate to get access to this data for use in their own businesses to assist with better credit assessments and financing decisions and to evidence compliance with responsible lending obligations under the NCCPA. By not dictating a date of participation, the smaller entities will be able to work to a timeframe that suits their budget and other priorities to develop and be in a position to resource the capital expenditure in IT, credit criteria and policies redevelopment, and retraining

of staff that would be required to participate in the exchange of CCR data in the consumer credit reporting system..

However, should a future Government consider broadening the scope of entities mandated to participate in CCR key criteria that should be included are: entity-size, data holdings, product offerings, distribution channels and customer demographics. AFIA would also see that consultation with industry around these metrics would also be a critical pre-cursor to the Government's decision.

ii. And to confirm – you would also support a three year transition period if the threshold was lowered?

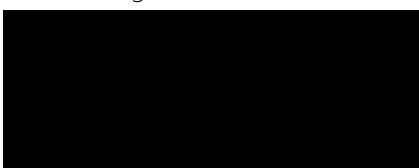
As noted above, AFIA does not support further extending mandatory participation in CCR. However, should the Government look to lower the threshold with the outcome of broadening the range of entities who's participation in CCR would be mandated, AFIA would support a reasonable transition period of at least three years as an appropriate means of achieving the Government's underlying policy objective in a way that balances the regulated-entity being able to prepare for, and resource, the compliance implementation.

b) Can you provide more evidence to substantiate your claims of implementation costs and IT investments to support your position for a three year transition?

AFIA has engaged and consulted with Members throughout the process of the Government's decision to mandate CCR and more generally in relation to CCR since the development of the 2014 amendments. Throughout this time, Members have relayed to us that to participate in mandatory CCR that they need significant lead time to make the necessary capital expenditure in IT, credit criteria redevelopment and retraining. Many do not have deep IT resources readily available to implement such a project. Due to the differences in Member businesses the investment required to participate in CCR will vary.

We thank the Committee for their engagement with us on the Bill. Should you wish to discuss the contents of this letter or require additional information generally, please contact myself at [REDACTED] or Alex Thrift, Economic & Policy Senior Adviser at [REDACTED] or both on [REDACTED]

Kind regards



Helen Gordon
Chief Executive Officer