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# ARCA submission on draft report from the Productivity Commission inquiry into Data Availability and Use

ARCA welcomes the release of the draft report from the Productivity Commission inquiry into Data Availability and Use, and we wish to record our broad support for the draft report.

The Australian Retail Credit Association (ARCA) is the peak industry association for organisations involved in the consumer credit reporting system. We have a significant interest in the new approach to data policy proposed by the Commission. We have, however, restricted our comments to matters relating to ARCA's mandate, namely promoting best practice in credit risk assessment and responsible credit practices.

ARCA has developed our response to the draft report through consultation with our Members and other subject matter experts. We note that Members have a range of views in relation to the draft report, and we make this submission knowing that some ARCA Members will be providing their own submissions in relation to the draft report.

In reviewing the Commission's draft report, ARCA has identified certain definitional, in-principle and practical questions and considerations as outlined below, with a focus on:

- The framework needed to support CCR regardless of whether it is voluntary or mandatory
- Recommendation 4.1 regarding a 40% critical mass benchmark by June 2017

## 1. RULES AND FRAMEWORKS FOR MANAGING CCR PARTICIPATION

As noted in our initial submission, ARCA considers that a voluntary participation model is preferable to a mandatory approach and would like to see industry achieve critical mass adoption on a voluntary basis. However, we note the Productivity Commission recommendation that, should industry not achieve voluntary critical mass adoption within a defined timeframe, a mandatory approach will be pursued.

Our comments below regarding rules and frameworks for managing comprehensive credit reporting (CCR) participation are provided as input in the event that a mandatory approach is ultimately deemed to become necessary.

ARCA refers to the Commission's comments on page 549 regarding the requirement for a set of rules and frameworks in any legislation to compel mandatory participation[1], and notes that such a set of rules and processes is already provided for in the form of the existing Privacy (Credit Reporting) Code (CR Code), the Principles of Reciprocity and Data Exchange (PRDE) and the Australian Credit Reporting Data Standard (ACRDS). The PRDE and ACRDS is not CCR itself, it is a system of rules, standards and behaviours that operates to support CCR.

ARCA has long supported the position that however CCR is implemented – whether by an industry-based arrangement such as the PRDE or via a government-led mandatory arrangement – participants will still require such a set of rules, standards and behaviours to support CCR. For example, in either a mandatory or voluntary system, participants will still require a data standard to facilitate the credit reporting data exchange – and a set of rules to govern use of that data exchange.

The ACRDS is not a static instrument – it requires ongoing consultation to ensure all participants interpret and apply the standard consistently, as well as with regard to updates, amendments and refinement to address identified shortcomings, meet changing conditions and requirements, adapt to technological advancements and so forth. Such activities are currently managed by a working group of representative industry leaders operating under the auspices of the PRDE framework.

Similarly the provision of guidance, oversight and resolution of breaches or disputes requires an oversight mechanism and capacity. Without an industry framework to manage these functions, as provided for by the PRDE, the alternative would be for a regulator, such as the Office of the Australian Information Commissioner (OAIC) in the instance of credit reporting, to manage the operations of the system. The OAIC, or any other regulatory body formed for this purpose, would likely not have the resources, expertise or inclination to regulate matters at this level of operational detail. Furthermore, the time taken to recreate and re-establish these mechanisms would introduce further delay to the transition to full CCR reporting and utilisation by industry.

The Commission has, consistent with the approach in New Zealand, the United Kingdom and the United States, supported a voluntary approach to implementing CCR unless it becomes clear that a critical mass of accounts is not achievable on that basis. The Commission further noted that "the slow uptake of voluntary CCR in Australia therefore raises the question of whether government should mandate participation, or take some other policy action to encourage participation, so that system wide net benefits can be realised".

Whether the Commission supports a voluntary or mandatory approach to the adoption of CCR, the PRDE has a critical role to play. The PRDE is the only current framework, it was subjected to extensive industry development and consultation processes and it has been reviewed and endorsed as a reasonable framework by a range of regulators and industry leaders. In the event that a mandatory regime is implemented, then ARCA would suggest that adopting the PRDE as the basis for that system is the only way to meet the Commission's desired timeframe.

Furthermore, it is key to ensure that technological and business preparations to commence CCR reporting are not delayed as a result of uncertainty regarding the potential construct of such a mandatory scheme and the attendant rules and standards. ARCA has already heard that certain Members, who have concerns as to whether industry will achieve the 40%

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1 *"Any legislation to compel mandatory participation is likely to require a fairly high level of prescription – for example, specifying the data that would be reported, how it would be reported (format) and to who it would be reported (for example, to all credit bureaus or just one). In rapidly evolving industry environments, highly prescriptive legislation can become dated quickly. Any legislation would also need to provide for policing and enforcement. A voluntary scheme, by comparison, could evolve over time and settle on certain agreed arrangements over matters such as coverage, format and obligations, and in this way utilise the advantages that 'self-regulation' has in certain instances (compared to explicit government regulation)."*

benchmark by the end of June and thus consider a high probability of a mandatory outcome, are considering delaying participation till the form of such participation and attendant framework are clear in order to avoid incurring additional cost in system rework and redevelopment.

It will be the early movers who pave the way for broader adoption of CCR by overcoming obstacles and creating the momentum that will enable and encourage participation of other organisations that are slower to progress. It would be extremely unfortunate if these early movers, having demonstrated positive commitment to CCR, were then penalised by having to align to a different set of standards and rules, thereby incurring additional cost and impost.

In addition, the potential to achieve the benchmark participation hurdle recommended by the Commission would be undermined if key early movers, currently committed to progressing their participation in CCR during 2017, were to revisit that timetable in order to await certainty on this issue in order to avoid the risk of potential system redevelopment cost and effort due to uncertainty on this issue.

Recognising the existing industry framework as a model for participation, regardless of whether voluntary or mandatory, would ensure that delay could be avoided.

It is therefore proposed that, regardless of whether a voluntary or mandatory approach to CCR is adopted, the existing mechanisms be leveraged to give effect to the ongoing management and oversight of CCR. This may be achieved, for example, through a recommendation that the PRDE and attendant mechanisms be leveraged as the framework for operationalisation of the CCR system whether under a voluntary or a mandatory system.

While ARCA is currently the body which governs and operates the PRDE, it would be appropriate that this be reviewed in the event of a mandatory regime. Whether it was ARCA or another body (regulatory or otherwise) that is ultimately mandated to provide the governance of the PRDE is not critical to the issues above. However, removing uncertainty regarding the substance of the framework itself is key.

## 2. FEEDBACK ON THE PROPOSED 40% BENCHMARK

ARCA supports the broad intent of setting a benchmark and timetable for adoption of CCR, however, a complete and unambiguous definition of the benchmark is essential. While 40% is a clear target percentage, there is a need for additional contextualisation and clarification.

### Private mode versus Public mode:

Looking at the current transitionary credit reporting environment, some data furnishers are providing their data to bureaux in so-called 'private mode' (where that data is only exchanged between the data furnisher and the credit reporting body) during a pre-reporting readiness and testing phase, while others are allowing for their data to be exchanged in a "public" data exchange, in other words, visible to other CCR participants. Data exchanged in private mode, while it may conform to the provisions of Part IIIA of the Privacy Act in terms of what is permitted to be disclosed, is not considered to form part of "CCR data". ARCA proposes that any benchmark set by the Commission in the final data report would refer to "public" exchange of data and recommends that this be made explicit.

### Appropriate denominator:

In terms of the proposed 40% benchmark, ARCA notes that certain challenges exist in determining an accurate and consistent denominator and, without clear stipulation of the applicable denominator and agreement on how that will be derived, this leaves open both the definition of the metric that the 40% benchmark relates to, as well as how to measure this.

Conceptually, 40% could be measured on a number of bases, including:

- **The percentage of credit profiles at a credit reporting body containing "some" CCR data in public mode** – this would measure the benchmark at the level of individual consumers. Each consumer would likely have more than a single credit product – for example a car loan, a credit card and an auto loan. This benchmark would require at least one credit product on a profile to be reporting CCR data.

  However, it leaves open the question of what would constitute an adequate amount of CCR data at the profile level to comply with the benchmark. To address this uncertainty by stipulating this measure as a percentage of profiles containing one or more specific asset classes would be counter-productive as this would have the effect of prioritising credit providers' attention to those asset classes, to the potential exclusion of others thus undermining the overall intent of encouraging full participation in CCR.

- **The percentage of credit accounts where CCR data is being reported to bureaux in public mode** – meaning all active credit accounts provided by credit providers as defined under Part IIIA of the Privacy Act. This would include non-financial services accounts such as telecommunications and utilities accounts as well as financial services accounts, and thus raises the question of how the measure would accommodate the fact that this category of credit providers can report Consumer Credit Liability Information (CCLI) only[2] and not Repayment History Information (RHI) level[3] data.

  To set the definition at the CCLI level only could be counter-productive as this would then have the effect of focusing credit providers on reporting of CCLI to the potential exclusion of RHI. While CCLI data alone would support progress towards achieving better Responsible Lending outcomes, RHI data is key to informing effective risk assessment and represents a significant contributor to the value and benefit of CCR. Deprioritising focus on this would greatly undermine the objective of achieving broad positive outcomes from participation.

  While consideration might be given to setting a dual benchmark, namely a percentage of financial services active credit accounts where full CCR is reported in public mode and non-financial services accounts where CCLI data is reported in public mode, ARCA recommends that the measure be restricted to financial services accounts.

  While the participation of telecommunications and utilities credit providers in the CCR system is highly desirable, and indeed ARCA supports initiatives to provide for the inclusion of RHI data from non-financial credit providers in the CCR system, ARCA is of the opinion that focusing the measure around financial services credit accounts is pragmatically appropriate and would represent a comprehensive and relevant measure of meaningful progress towards an effective comprehensive credit reporting ecosystem in Australia.

  ARCA does, however, support the principle of broad-based participation in the comprehensive credit reporting system and would welcome Privacy Act reform which permitted the participation of telecommunications and utilities credit providers in full CCR, including reporting of Repayment History Information.

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[2] *CCLI data comprises: account type; date account opened; data account closed; credit limit and credit provider. CCLI data may be reported by both non-financial and financial credit providers.*

[3] *RHI (Repayment History Information) data provides information about the consumer's conduct of their account specifically whether the account is current and up to date or, in the case of an arrears status, months past due (ageing). RHI may be reported by only financial-services credit providers (i.e. lenders).*

- **The percentage of financial services credit accounts where CCR data is being reported to bureaux in public mode** – meaning all active credit accounts provided by Australian Securities and Investments Commission-licensed credit providers. This metric would include both secured accounts such as residential mortgages and vehicle finance, and unsecured accounts such as credit cards and personal loans.

  While seemingly a straightforward definition, this does beg the question of how to accurately measure the denominator. There is no single source that would provide for a completely accurate and definitive measure of the total number of active credit accounts in Australia.

  That being said, arguably all credit providers could report their total number of active credit accounts in confidence to a trusted non-partisan entity in order to derive this number. There are also estimates of the total number of active credit accounts that have been derived using a range of input sources including direct credit provider data, and reporting by regulated entities to the Australian Prudential Regulation Authority. However, it is clear that a reasonably accurate measure of the total number of active credit accounts in Australia will be key to ensuring that such a benchmark is accurate, relevant and meaningful.

  ARCA is currently working with Members and other experts in the financial services industry to derive an acceptably accurate estimate of the total number of accounts to be used for the purpose of the denominator.

**Progress tracking and monitoring:**

ARCA is working with industry participants on the development of the ARCA Credit Reporting Data Fact Base which will allow us to publicly report monthly or bi-monthly on the transition of industry towards CCR participation. The Fact Base will track and report on the CCR data being reported to the credit bureaux in both private and public mode, as well as reporting on the number of PRDE signatories[4].

We recognise that industry and government needs clearer indicators to track the progress of the implementation of CCR, and this has been noted by the Commission in its proposal around CCR. Given ARCA's role as the peak industry association for organisations involved in the consumer credit reporting system in Australia, as a non-partisan and trusted party, ARCA is well positioned to collect and publish a "Fact Base" of quality data for the industry.

The Fact Base will cover all credit providers that provide consumer credit and report to any of the three major credit reporting bodies (CRBs), Dun & Bradstreet, Experian and Veda (Equifax).

This Fact Base is proposed to report on the following indicators:

- Number of positive records these credit providers[5] have contributed to a CRB starting in January 2016, broken down by portfolio (for example Personal Loans, Mortgages, Credit Cards, and so on) and distinguishing between private mode and public mode as a percent of total active credit accounts
- Date of first load of comprehensive credit information privately and publicly

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[4] *While participation in CCR is voluntary, as is being a signatory to the PRDE, those institutions wishing to participate in Comprehensive Credit Reporting, both Credit Providers and Credit Reporting Bodies, are required to become signatories, by Deed Poll, to the PRDE thereby signifying their acceptance of, and commitment to upholding, these rules, norms and standards.*

[5] *Credit Providers will not be individually identified but will be aggregated by lender type, e.g. Major Banks, International Banks, Auto Financiers.*

- Date from which repayment history information records begin
- Number of PRDE signatories.

The measure of industry progress towards CCR participation as tracked and reported in the ARCA Credit Reporting Data Fact Base would align to the definition specified for the 40% benchmark in the Commission's inquiry final report. It is anticipated that this ARCA Credit Reporting Data Fact Base will begin to be reported as of January 2017[6].

We would encourage the Commission to consider how the Fact Base can support the broader reporting required to track transition in accordance with the benchmark recommendation. ARCA is in a key position to support any reporting requirements, and we would be keen to support any reporting of industry transition, either as a partner with other entities or as a designated reporting entity for the benchmark.

**Feedback on timing:**

As noted previously, ARCA is supportive of the principle of a benchmark and timetable as these remove some of the uncertainty that currently hampers individual organisations' planning and approval processes for the commencement of reporting CCR data, given that the benefits of CCR derive only once other participants are publicly reporting CCR data[7].

However, ARCA considers it important to uncouple consideration of the appropriate critical mass benchmark relating to CCR adoption from consideration of a reasonable timeframe to achieve that benchmark.

There are certain issues that may have bearing on the achievement of the 40% benchmark within the envisaged timeframe, most notably:

- Continued uncertainty regarding the outcome of the Financial Ombudsman Service (FOS) position on reporting of RHI under a payment arrangement that is an indulgence (not a contract variation)
- Dependency on technology development programmes
- Not all credit providers are likely to begin contributing CCR data in advance of the deadline and not all credit providers that do begin contributing CCR data will be able to report across 100% of portfolios and accounts by the deadline.

ARCA recognises that technology projects are seldom quick to implement and that several ARCA Members who are strongly committed to being among the earliest adopters have certain technology project dependencies which may put pressure on their achieving the end of June deadline.

For example, we are aware of the dependency on a key technology in a major bank that means that the earliest they would be in a position to consume CCR data would be April 2017. This entity would be a key contributor to the achievement of the 40% benchmark and there is a risk that any slippage on this project timetable may have a broader impact on overall industry ability to meet the deadline.

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6 *Subject to the CRBs having received the necessary consents from Credit Providers to share the aggregated data with ARCA. Note that no personal information will be provided to ARCA, only the total number of accounts being reported by each credit provider, broken down by product type.*

7 *It is noted that, while the benefits only begin to accrue once there are at least 2 meaningful sized participants reporting in public CCR mode, compliance penalties under the Privacy Act carry material potential financial penalties resulting in a benefits and costs asymmetry that has mitigated against adoption.*

We are further aware of other key players who are confident that they will be ready to begin reporting certain portfolios by the deadline but have technology project dependencies that will prevent them from being able to report CCR data across all their portfolios in this timeframe.

Given that it is likely that certain entities, including some of the major banks, may not begin reporting some or all of their portfolios by the end of June, this may put this date under pressure.

The Commission noted that uncertainty surrounding the way in which CCR interacts with the hardship provisions of the National Consumer Credit Protection Act is discouraging participation in the CCR. Whilst this is correct, ARCA notes that, at present, the major barrier to the commencement of CCR is the position currently being taken by the FOS in relation to *non-hardship* payment arrangements.

The FOS matter is of significant concern with regard to timetable since satisfactory resolution of this issue in a timely fashion is not within the control of ARCA. Instead progress on this matter rests with the OAIC through the provision of guidance on the interpretation of the Privacy Act on how RHI should correctly be reported during an indulgence or payment arrangement. ARCA has actively sought this guidance.

Depending on the outcome of this matter, the question of CCR adoption may be somewhat moot as an outcome that undermines the accuracy or reliability of repayment history information challenges the CCR system at a very profound and fundamental level. The credit reporting system relies upon the integrity of the data being reported and Repayment History Information is the cornerstone of the data provided for under the CCR system. RHI data that cannot be relied upon to present an accurate and true reflection of a consumer's payment conduct has no inherent integrity or value and there is simply no point in reporting or using RHI under these circumstances.

Given that the Privacy Act is already highly restrictive in the range of data fields that are permitted to be shared, excluding, for example balance, utilisation and payment amount data, suppression of RHI directly or indirectly in this way would significantly undermine the benefits and rationale for CCR adoption and, even assuming forced participation through a mandatory regime, would result in a very low level of benefit to the overall system.

A timely and sensible outcome to this matter is thus critical, both for the timetable that has been proposed by the Productivity Commission and, more fundamentally, for the value and integrity of the credit reporting system in general. The OAIC has advised that they hope to be in a position to finalise their process and provide guidance in this regard towards the end of January.

ARCA has been advised that some major credit providers are at present unwilling to progress or trigger any CCR related technology change projects until this matter is resolved. Given the combination of time required to scope and implement the required technology projects, in addition to the time which will be required to satisfactorily resolve this matter with the OAIC, we hold real concerns that the mid-2017 benchmark will not be achieved.

With reference to the Commission's view that a failure to achieve the 40% contribution benchmark should then lead to preparation of legislation by the end of December 2017 for a mandatory contribution framework to commence at the end of 2018, we note that a shift to allow for additional time to voluntarily meet the critical mass threshold does not require a shift in the proposed commencement of the mandatory timeframe.

## 3. LOOKING BEYOND THE IMPLEMENTATION OF CCR

### Meeting regulatory requirements through data exchange:

The Commission's draft report proposes a fundamental rethink of how data is considered, by individual consumers, by industry, and by the framework that currently exists to regulate and manage that data across the Australian economy and wider society.

In one sense, there is a bright and exciting future envisioned by the Commission. One where consumers can exercise their Comprehensive Right to their consumer data, where data portability can drive better outcomes, and where, in a credit risk sense, they can operate as a so-called 'bureau of one', bringing together relevant data that can provide credit providers with accurate, timely and reliable data from a broader range of sources than would otherwise be explicitly provided for under legislation.

In another sense though, whether and how this could work for consumers will come down to defining and guiding behaviours, consumer education and engagement, and building a rules framework that can support better outcomes for all participants. Implementation will be key.

Many credit providers are subject to responsible lending requirements, and the need to verify a consumer's situation. In order to protect a consumer's privacy on the one hand, credit providers are being forced outside the credit reporting system to meet their regulatory requirements. Hence we have seen the rise of the 'account scraping' providers whereby consumers are actively giving their account details to organisations to access their accounts and use that information to perform analytics in order to meet responsible lending needs via another mechanism. It is ironic that the tight restrictions on reporting and use of credit data under the Privacy Act in order to protect consumer privacy on one hand is driving lenders to find alternative sources of data that may well involve a lower protection of privacy standard in order to satisfy their responsible lending obligations.

### Increased data exchange for the credit reporting system:

The Commission has noted that the Australian CCR regime provides for less data exchange than what is available in other markets, such as the United States and United Kingdom.

Additional data noted by the Commission worth consideration for inclusion includes balance, government debts such as tax debts, and account repayment information for utilities and telecommunications accounts.

The Commission also noted that some businesses are using non-traditional datasets (such as tenants' on time rent payments and social media) and data analytics to overcome information asymmetries in credit risk assessment and, in so doing, "are increasing access to credit (or more affordable credit) to those without an existing credit record, such as young adults".

As noted in our original submission, ARCA supports the inclusion of additional data in the credit reporting system.

## 4. CONCLUSION

As noted above, ARCA broadly supports the finding of the Commission and the proposals outlined in the draft report. We hold some concerns about the proposed benchmark for the transition to CCR, including the denominator and the timeframe – but we seek to be active partners in supporting industry to achieve critical mass.

To that end, ARCA proposes that a fundamental review of Part IIIA of the Privacy Act should be considered in the context of implementation of the major reforms to data policy as outlined by the Commission. Such a review should consider:

- Provision for broader-based participation in comprehensive credit reporting by permitting entities such as telecommunications and utilities providers to report RHI data
- Removing the restrictions that prohibit the use of credit data for portfolio management purposes and early warning identification of credit stress and potential delinquency
- Expansion of the data elements that may be reported to CRBs to include, *inter alia*, balance; utilisation and payment amount information
- The regulation of the credit reporting system to determine whether the current framework can achieve the most positive outcomes for consumers, industry and the broader economy – including whether the regulation of credit reporting should remain in the Privacy Act, or transition to the proposed *Data Sharing and Release Act*
- How prescriptive the legislative framework should continue to be in relation to credit reporting with regard to the overall operation of the credit risk environment, and what can and should be covered in regulation or industry standards to better provide for the necessary data sharing required to enable effective risk management and responsible lending practices
- Additional data, access and uses that should be considered for the credit reporting system.

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