

SUBMISSION

to the Productivity Commission Inquiry on Data Availability and Use

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A. EXECUTIVE SUMMARY

The Australian Retail Credit Association (ARCA) is the peak industry association for organisations involved in the consumer credit reporting system. ARCA and our Members have been leaders in the introduction of comprehensive credit reporting in Australia.

ARCA has developed this submission with reference to the following matters in the Terms of Reference related to this Inquiry, namely:

- **TOR 1 (generally):** Examine the benefits and costs of options for increasing availability of public sector data to... the private sector – particularly with reference to the inclusion of government data in the credit reporting system.
- **TOR 2 (generally):** Examine the benefits and costs of options for increasing availability of private sector data for other private sector firms, the public sector, the research sector, academics and the community – with particular reference to the benefits of comprehensive credit reporting, and ARCA's additional data exchange proposals
- **TOR 2.d:** Provide an update on existing data sharing initiatives in Australia, including the uptake of the credit reporting framework. Consider recommendations for improving participation in such initiatives – with particular reference to the update on the Principles of Reciprocity and Data Exchange (PRDE), and examination of barriers to the implementation to comprehensive credit reporting.
- **TOR 4:** Examine the options for standardising the collection, sharing and release of public and private sector data – with particular reference to the development and operation of the Australian Credit Reporting Data Standard (ACRDS).
- **TOR 5 (generally):** Examine ways to enhance and maintain individuals' and businesses' confidence and trust in the way data are used – with particular reference to the development of the PRDE.
- **TOR 5.b:** Benchmark Australia's data protection laws, privacy principles and protocols against leading jurisdictions – with particular reference to the international snapshot.

ARCA Members support participation in comprehensive credit reporting (CCR), and have led the process towards CCR in Australia. In December 2015 the Australian Competition and Consumer Commission (ACCC) approved the final piece of the CCR framework, the PRDE. All major credit providers have projects in place that would enable transition to CCR, and this voluntary approach should be allowed time to succeed before consideration is given to mandating any aspect of CCR. Credit providers are also implementing other regulatory change projects that impact credit provision, and hence CCR transition projects must work in parallel with these.

ARCA Members support allowing new data sets into the credit reporting system in addition to the data now available under CCR, to expand and support the role of credit reporting in ensuring credit providers can meet their responsible lending obligations.

1. COMPREHENSIVE CREDIT REPORTING

The Australian Retail Credit Association

ARCA is the peak industry association for organisations involved in the consumer credit reporting system in Australia. We were established in 2006 with the purpose of promoting common standards of best practice in credit risk assessment and responsible credit procedures.

Membership of ARCA is voluntary and includes nearly all significant bank consumer credit providers, many key finance companies, and all major Australian credit reporting bodies (CRBs). Australia's mutual banks, credit unions and building societies are able to join ARCA in their own

right, but most choose to be represented in ARCA through their industry association, the Customer Owned Banking Association (COBA). A full list of ARCA Members is available at Attachment A.

ARCA's role in the consumer credit reporting landscape

Australia's credit reporting system is regulated through Part IIIA of the *Privacy Act 1988* (the Privacy Act), associated regulations, the *Privacy (Credit Reporting) Code 2014* (the CR Code), and additional minor regulatory instruments¹. The credit reporting system is directly regulated by the Office of the Australian Information Commissioner (OAIC). The Australian Securities and Investments Commission (ASIC) is a key stakeholder, as it recognises that the credit reporting system can contribute towards the responsible lending obligations of licensed credit providers². Information on the operation of the credit reporting system is available in Attachment B.

ARCA Member credit providers contribute over 90% of the data contained in the consumer credit reporting system. We advocate on behalf of our Members in relation to the public policy settings for the credit reporting system. ARCA Members support the inclusion of additional data sets in the credit reporting system beyond CCR, and greater access to and contribution of repayment data beyond ASIC-licensed credit providers.

In 2008 the Australian Law Reform Commission (ALRC) conducted a review of Australian Privacy law and practice³. In the course of this law reform process, ARCA provided a single voice for expanding and improving the credit reporting system which paved the way for the adoption of comprehensive credit reporting in Australia.

ARCA was an active participant in promoting legislative reform of the credit reporting system, in particular by advocating for the passing of the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (the Amendment Act). ARCA provided submissions on behalf of Members to the various parliamentary committees that examined that Bill⁴, and on the regulations related to the Amendment Act⁵.

ARCA was appointed as Code Developer by the then-Australian Privacy Commissioner, Mr Timothy Pilgrim PSM, for the CR Code. As Code Developer, ARCA undertook an extensive consultation process, including engagement with regulators, consumer advocates, industry ombudsman schemes and other stakeholders. ARCA established the credit reporting Code Industry Council, consisting of ten key industry associations and representatives from the three major credit reporting bodies, to ensure all relevant industry stakeholders involved in credit reporting had an opportunity to participate in the CR Code development process.

Post-Code development, we continue to provide a forum for ARCA Members to meet regularly and exchange ideas and learnings on improving the credit reporting system. Through active engagement, we facilitate a better understanding of credit reporting-related issues between a range of stakeholders including Members, consumer advocates and regulators. We also assist Members to manage their transition to comprehensive credit reporting, and seek to improve consumer financial literacy through our CreditSmart program⁶. We provide a range of other Member services in line with our role as a peak body for the credit reporting system, including training and events.

¹ <https://www.oaic.gov.au/privacy-law/privacy-act/credit-reporting>

² <http://download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf>

³ <http://www.alrc.gov.au/publications/report-108>

⁴ <http://www.arca.asn.au/docs/98/exposure-draft-of-australian-privacy-amendment-legislation-credit-reporting> & <http://www.arca.asn.au/docs/99/inquiry-into-the-privacy-amendment-enhancing-privacy-protection-bill-2012> & <http://www.arca.asn.au/docs/1304/arca-submission-to-senate-leg-constitutional-affairs-cttee>

⁵ <http://www.arca.asn.au/docs/433/20131127-agd-submission-re-privacy-regulations> & <http://www.arca.asn.au/docs/44/submission-regulations-05102012> &

<http://www.arca.asn.au/docs/513/20140123-arca-submission-to-agd-on-additional-regulations>

⁶ Further information on CreditSmart is available at www.creditsmart.org.au

Finally, ARCA developed the PRDE, the industry self-regulatory framework that deals with how credit providers (CPs) supply data to credit reporting bodies (CRBs) and the rights of CPs to receive data from CRBs. All major CRBs and some ASIC-licensed credit providers are signatories to the PRDE.

Road to comprehensive credit reporting in Australia

Engagement with the credit reporting system by credit providers is voluntary in Australia. This means credit providers can choose to make credit assessments without regard to the credit reporting system, assuming they meet their responsible lending and other regulatory obligations via other means. Nonetheless, many credit providers choose to participate in the credit reporting system in order to most efficiently make sound credit decisions.

Historically, only limited credit-related personal information could be collected and disclosed in the credit reporting system. For decades, Australia's credit reporting system only accommodated "negative" information, including information relating to payment defaults and bankruptcy incidents.

Significant innovation in credit reporting systems internationally put Australia at risk of falling behind other global markets. Improvements in the availability and quality of credit reporting data overseas highlighted to ARCA Members the value of a comprehensive credit reporting system⁷. As a result, ARCA Members began to advocate for a more comprehensive credit reporting environment in Australia. ARCA identified three key elements to enable comprehensive credit reporting in Australia:

- legislative reform
- a common standard for data exchange between participants, and
- a set of rules to facilitate and govern data exchange between participants.

Legislative Reform

From 2008, ARCA urged the federal government to enable comprehensive credit reporting in Australia through legislative reform.

In March 2014, amendments to the Privacy Act allowed the collection and disclosure of consumer credit liability information (CCLI) and repayment history information (RHI). Under the improved, comprehensive credit reporting system, credit reports can now include profiles of credit behaviour of consumers across all consumer credit accounts they actually hold (with licensed credit providers) rather than just reflect the 'negative' behaviour of consumers with 'poor' credit history. This more comprehensive credit information can provide a wide range of public benefits, including greater access to credit, the more accurate pricing of credit, the promotion of responsible lending, reduced rates of over-indebtedness and default incidents, greater competition in the credit market, and increased financial stability and efficiency across the economy.

The Australian Credit Reporting Data Standard

The Australian Credit Reporting Data Standard (ACRDS) provides a standard of data exchange developed by ARCA and adopted by its Members when the legislation came into effect in 2014. The ACRDS provides a uniform standard for credit providers to contribute comprehensive data to CRBs, allowing CRBs to more efficiently manage that credit provider contributed data, including in its responses to access requests.

⁷ Further information on the operation of comprehensive credit reporting in overseas markets is available in Attachment C.

A consistent standard of data supply reduces the cost of supplying data to multiple CRBs and also gives all participants confidence in the data in the system because everyone produces available data in the same way with the same definitions and formats.

The Principles of Reciprocity and Data Exchange

Participation in credit reporting under the PRDE framework is voluntary, but once an entity becomes a signatory to the PRDE, they agree to operate under the same set of data exchange rules as every other PRDE signatory. These rules, founded on reciprocity, were developed to facilitate comprehensive credit reporting.

The intention of the PRDE is to create an open, transparent and standardised system for the management, treatment, exchange and acceptance of CCLI and RHI among signatories. The rights and obligations set out in the PRDE's multi-lateral framework are necessary to build confidence in the integrity of the system, to ensure the system operates effectively and to ultimately provide appropriate incentives for participation in CCR.

The key PRDE rules were submitted to the ACCC and ultimately authorised on 25 December 2015. Effectively, in terms of creating the necessary legal, regulatory, and industry frameworks required to facilitate CCR, this was only completed in December 2015. Until then, industry had no certainty that a workable model for CCR had been achieved.

An international snapshot

The PRDE draws on the example and lessons of international jurisdictions. As a result the protocols of the PRDE put Australia on par with major global markets when it comes to having a robust framework for comprehensive credit reporting.

South Africa

South Africa permits comprehensive credit reporting through a voluntary industry based model. Legislation enables sharing and provides oversight into financial conduct. The major South African credit reporting bodies have entered into an industry regulated code, through the Credit Providers Association. Credit provider members of the Association agree to submit comprehensive data to all credit reporting bodies who agree to only on-supply this data to other members.

United Kingdom

The United Kingdom permits comprehensive credit reporting through a voluntary industry based model. Legislation enables sharing and provides oversight into financial conduct. The Steering Committee on Reciprocity was established and maintains Information Sharing Principles of Reciprocity to encourage the exchange of credit information. All major credit reporting bodies have included adherence to the Principles in their services agreements.

United States

The United States permits comprehensive credit reporting through a bi-lateral voluntary industry based model. Legislation enables sharing and provides oversight into financial conduct. Comprehensive credit sharing forms part of the contractual arrangements between credit reporting bodies and credit providers. It should be noted that a primary reason why the United States system lacks a central code is that the system has always allowed for comprehensive data sharing.

World Bank

The World Bank has published the **General Principles for Credit Reporting** setting out its position on the importance of credit reporting systems to support sustainable growth. This paper highlights a number of important issues including the importance of a rules-based framework, high quality exchangeable information, and that improved information flows also provide the basis for better credit assessments, thus facilitating access to credit to a larger number of borrowers with a good credit history⁸.

Benefits of comprehensive credit reporting in Australia

Comprehensive credit reports reflect a more complete picture of consumer credit behaviour, rather than just reflecting negative information about the behaviour of select consumers with 'poor' credit history.

The additional data elements available include information about the credit product and arrangement, such as the date the consumer credit is opened, the type of consumer credit (for example, credit card, car loan or overdraft), the name of the credit provider, the credit limit and certain additional information from the terms and conditions related to the product⁹.

Comprehensive credit reporting also allows for valuable information about the consumer's credit behaviour to be included, such as whether or not an individual has met their repayment obligations (RHI), whether a consumer has defaulted on a debt as well as information about relevant court proceedings or personal insolvency.¹⁰

Access to more types of consumer credit information allows lenders to make better credit decisions, with resulting benefits to consumers in the form of greater financial inclusion and a reduction in rates of consumer over-indebtedness.

CCR has been acknowledged as a vital part of Australia's economic infrastructure¹¹. This more comprehensive credit reporting information can provide a range of benefits¹², including:

⁸ <http://documents.worldbank.org/curated/en/2011/09/16426885/general-principles-credit-reporting>

⁹ Section 6 of the Privacy Act, Privacy Regulation 2013

¹⁰ Section 6N of the Privacy Act.

¹¹ <http://sjm.ministers.treasury.gov.au/media-release/032-2016/>

¹² Further information on the benefits of CCR is available here:

- ACIL Tasman, *Comprehensive Credit Reporting: Main Report of an Analysis of its Economic Benefits for Australia* [Prepared for MasterCard International] (2004), 19, 21.
- Australian Law Reform Commission 2008, *Australian Privacy Law and Practice*, Volume 3, Report 108, Commonwealth of Australia, Canberra.
- Barron, J and Staten, M 2003, 'The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience', in *Credit Reporting Systems and the International Economy*, ed. Miller, M, MIT Press, Boston.
- Centre for International Economics and Edgar Dunn and Company, *Options for Implementation of Comprehensive Credit Reporting in Australia* [Prepared for MasterCard Worldwide] (2006), 7.
- Expert Group on Credit Histories (to the European Commission) 2009, *Report of the Expert Group on Credit Histories*, DG Internal Market and Service, Paris.
- <http://www.australianbankingfinance.com/banking/opinion--positive-data-brings-a-new-world-of-opportunity>
- <https://www.mebank.com.au/media/1581889/Briefing-note-2014-12-10-Analysis-of-CCR-in-overseas-markets.pdf>
- <https://www.veda.com.au/insights/comprehensive-credit-reporting-ccr>
- International Finance Corporation 2012, *Credit Reporting Knowledge Guide*, International Finance Corporation (part of the World Bank), Washington, DC.
- Johnson, S 2013, 'Consumer lending: implications of new comprehensive credit reporting', *JASSA — The FINSIA Journal of Applied Finance*, no. 3.
- Rothemund, M and Gerhardt, M 2011, *The European Credit Information Landscape*, European Credit Research Institute, Brussels.

- Improved access to credit for minorities that would otherwise struggle to access credit
- More accurate pricing of credit
- The promotion of responsible lending
- Lower rates of over-indebtedness and default
- Greater competition in the credit market
- Fraud mitigation to assist in controlling the cost of credit to consumers
- Increased financial stability and efficiency across the economy.

ASIC has acknowledged an accurate and complete credit reporting system that includes comprehensive data will provide credit providers with a valuable tool to help verify a consumer's financial situation¹³. In its regulatory guide to responsible lending conduct¹⁴, ASIC sets out expectations on credit providers to satisfy the responsible lending obligations contained in the National Consumer Credit Protection Act (Cth) 2009 (NCCP Act). The guide recognises credit reports as a valuable tool for credit providers to satisfy their obligations to make reasonable enquiries and verifications.¹⁵

The ACCC has also recognised that comprehensive credit reporting will lead to increased competition between credit reporting bodies and between lenders, and assist lenders to comply with their responsible lending obligations at less cost¹⁶.

Further information on the role of comprehensive credit reporting in the Australian economy is available at Attachment D.

2. VOLUNTARY PARTICIPATION IN COMPREHENSIVE CREDIT REPORTING

Development of a voluntary industry developed framework

The legislative framework that was enacted in 2014 to regulate the collection, use and disclosure of new types of comprehensive credit information is silent on how or why credit providers would exchange that information with other participants in the credit reporting system. In order to realize the benefits of comprehensive credit reporting, industry recognized the need to develop a framework establishing obligations of reciprocity, consistency and enforceability in the process of exchanging credit information.

The ALRC's September 2007 Discussion Paper 72¹⁷ "Review of Australian Privacy Law" reported that all credit providers consulted had identified the benefit of reciprocity in ensuring completeness of credit reporting data and noted that:

"Reciprocity is one means by which access to enhanced credit reporting information could be differentiated – so that, for example, some subscribers may obtain information about current credit commitments and repayment performance."

However, the ALRC considered that the implementation of reciprocity was a matter for credit providers and industry associations to determine by developing an industry code. Its proposal 51-2 was therefore that:

"The credit reporting code should provide for access to information on credit information files according to principles of reciprocity. That is, in general, credit providers only should

¹³ <http://registers.accc.gov.au/content/index.phtml/itemId/1184971/fromItemId/278039/display/submission>

¹⁴ ASIC Regulatory Guide 209 <http://download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf>

¹⁵ At RG 209.27, ASIC Regulatory Guide 209 <http://download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf>

¹⁶ <https://www.accc.gov.au/media-release/accc-authorises-system-to-facilitate-credit-reporting>

¹⁷ <http://www.alrc.gov.au/dp-72>

have access to the same categories of personal information that they provide to a credit reporting agency.”

Following consultation, the ALRC’s 2008 report¹⁸ expressed the view that a credit reporting code should be developed but the precise legal status and governance structure of this code ought to be a matter for industry to resolve.

Similarly, the Amendment Act made no reference to reciprocity, or the need for the CR Code to address matters of reciprocity. However, the Explanatory Memorandum¹⁹ to the draft Bill noted that:

“The industry may choose to address some credit reporting issues (such as reciprocity between industry participants in the credit reporting system) which will not be regulated by the credit reporting provisions. It would be a matter for industry to determine what, if any, additional issues should be included.”

The PRDE has been developed in response to the credit reporting issues identified above and the suggested industry-led approach set out by the ALRC and Explanatory Memorandum.

The Financial System Inquiry also acknowledged the role of industry implementation of a voluntary comprehensive credit reporting regime, suggesting that government should consider mandatory participation if, over time, up-take in the voluntary scheme is inadequate²⁰. This is consistent with the Financial System Inquiry’s general approach that where competitive forces prevent industry opportunities from being fully realised, government should facilitate industry coordination²¹.

Recognising the need for further clarity about the implementation of comprehensive credit reporting and taking lead from the above suggestions for an industry-led approach based on reciprocity, ARCA supported industry to develop the PRDE. The PRDE imposes additional obligations that build trust and confidence in the exchange of credit reporting data.

These obligations, set out in a multi-lateral framework, are necessary to:

- Establish a common mechanism for the exchange of credit reporting information
- Build confidence in the integrity of the system
- Ensure the system operates effectively
- Provide appropriate incentives for participation
- Improve the existing exchange of negative information.²²

In November 2012, ARCA Members endorsed the *Australian Credit Reporting Principles of Reciprocity*, as a precursor to the principles set out in the PRDE (including the principle of reciprocity).

From July 2013, ARCA conducted a series of Member workgroup meetings and engaged with various stakeholders on these principles and the drafting of the PRDE. Stakeholder consultation occurred between ARCA and industry associations (Communications Alliance, Mortgage & Finance Association of Australia, Australian Collectors and Debt Buyers Association, Insurance Council of Australia, Energy Retailers Association of Australia, Australian Banking Association, Australian Finance Conference), consumer advocate groups and regulators (the OAIC and ASIC).

¹⁸ <http://www.alrc.gov.au/publications/report-108>

¹⁹ <https://www.legislation.gov.au/Details/C2012B00077/Explanatory%20Memorandum/Text>

²⁰ <http://fsi.gov.au/publications/final-report/>, p192.

²¹ <http://fsi.gov.au/publications/final-report/>, p144.

²²

<http://registers.accc.gov.au/content/trimFile.phtml?trimFileTitle=D15+24082.pdf&trimFileFromVersionId=1191221&trimFileName=D15+24082.pdf>

What is the Principles of Reciprocity and Data Exchange?

The PRDE binds signatories to abide by certain principles which ensure those credit providers and CRBs can have trust and confidence in the integrity of their credit reporting exchange.

The PRDE facilitates sharing of credit reporting information among signatories through a reciprocal data exchange. As a voluntary instrument, the PRDE leverages market pressure to attract signatories and build a critical mass of data exchange. Once critical mass has been reached, ARCA expects uptake to accelerate amongst remaining credit providers.

The PRDE is an open and standardised system for the management, treatment and exchange of positive data. Those outcomes have been achieved in the PRDE through embedding principles of Reciprocity, Consistency and Enforceability.

Reciprocity: Reciprocity is intended to ensure that a signatory receives the same level of data that they supply to the system.

Consistency: The system creates a level of consistent data supply between credit providers and CRBs. It provides a competitive and efficient system as credit providers contribute the same information to all CRBs with which they have service agreements, and credit providers contribute all of the credit information across each of their consumer credit portfolios.

Enforceability: A compliance system gives signatories confidence in the elements of reciprocity and transparency that are central to the system.

Further information on the PRDE is available at Attachment E.

Current voluntary engagement with the Principles of Reciprocity and Data Exchange

ARCA was created voluntarily by industry to advocate for and enable industry to move to CCR. ARCA's Members have voluntarily contributed well over \$10million dollars over many years to ARCA to enable creation of the industry framework for CCR including the CR Code, the ACRDS, and the PRDE. ARCA Members have spent substantially more in their internal preparations to transition to CCR. We believe that though our Members are at different stages in their CCR transition, each has indicated a desire to participate in CCR.

Certain provisions of the PRDE were subject to authorisation by the ACCC. Authorisation for five years was received on 3 December 2015 and came into effect on 25 December 2015.

Since then, all three major CRBs and a number of credit providers have become signatories to the PRDE (both ARCA Members and non-members). ARCA is working with many other credit providers to finalize their signing and a number of credit providers have indicated they will become signatories to the PRDE by the end of 2016. However there is a significant concern – addressed in the section of this submission titled 'Barriers to participation in comprehensive credit reporting' – that may delay or void these credit provider's intentions to participate in CCR through signing the PRDE.

The Government response to the Financial System Inquiry of October 2015 indicated that the Government supports an industry approach to comprehensive credit data sharing, and the

Government chose not to legislate at that stage in their response to Recommendation 20 in the Financial System Inquiry final report²³:

The Government agrees to support industry efforts to implement the CCR regime, but will not legislate for mandatory participation at this stage. The CCR regime has been in place for a little over a year and authorised deposit-taking institutions are still in the process of working to participate in the regime.

The Government recognised at that time that credit providers need time to prepare to participate in CCR.

On 24 February 2016 the Australian Government announced the establishment of a FinTech Advisory Group, which has been established “to help make Australia the leading market for financial technology in the Asia Pacific region.”²⁴

To coincide with the announcement of the Fintech Advisory Group, Australia’s fin tech start-up community launched the formation of a new industry association – FinTech Australia (FTA). FTA was formally launched by the Prime Minister and the Treasurer, during which they released a position paper *Priorities for reform of the Australian Financial Services Industry*.

Among a range of initiatives, this paper called for mandatory CCR to be implemented in Australia by the end of 2016 for some credit providers. In line with this paper, some elements of the credit reporting industry have publicly questioned whether a voluntary model of CCR will achieve adequate participation. It should be noted that mandatory advocates have not shared a preferred model of participation.

It should also be noted that there is no clarity around what the scope of “mandatory CCR” actually means. For example, is the call for mandatory CCR a call for mandatory *use* of CCR data, or mandatory *supply* of CCR data? Currently ASIC has not determined that use of credit reporting is mandatory for fulfilment of responsible lending obligations. If “use” is not mandatory then requiring mandatory supply is imposing a significant cost on the whole of industry to benefit some participants. The other question that is unclear is if “supply” is mandatory, to whom are CPs mandated to supply?

ARCA understands that within its own membership there are varying views on the issue of “mandatory” CCR, but ARCA continues to believe that:

- Industry is best placed to develop and manage frameworks around “how” CCR is best implemented – given the diversity in size and sector of participants a mandatory model could be unnecessarily prescriptive and complex.
- Individual organisations are best placed to make their own trade-offs around the level of investment they make to participate in CCR, and this will be driven by the level of benefits they expect to receive - a mandated approach may not be economically viable for some organisations and may impact their competitive position.

²³ <http://www.treasury.gov.au/PublicationsAndMedia/Publications/2015/Govt%20response%20to%20the%20FSI>

²⁴ <https://www.pm.gov.au/media/2016-02-24/joint-media-release-turnbull-government-backing-fintech>

- While industry migration to CCR is still at its early stage, industry has only had certainty that an acceptable framework would be in place for a very short timeframe.
- Industry will migrate to CCR, and that no large CP would be comfortable remaining outside CCR once a critical mass of participation was achieved.
- Whether voluntary or “mandatory”, full implementation of CCR will take a number of years.

While ARCA has not formally developed any policy position on what a preferred “mandatory” model might be, it appears to us that the most important policy question that should drive the debate is whether the “use” of CCR is considered necessary to fulfil responsible lending requirements. If this is decided in the affirmative (and it’s not clear it would be) then “supply” will naturally follow. In the absence of this, mandating “supply” may be a very inefficient and ineffective approach.

Barriers to participation in comprehensive credit reporting

As noted above, with the PRDE now operational most ARCA Members are working on finalising internal operational arrangements in preparation to exchange data under the PRDE framework. However our Members have identified significant barriers to participation in comprehensive credit reporting. ARCA recommends that regardless of whether CCR is mandated or not, these barriers must be addressed to ensure CCR participants are not presented with conflicting legal obligations and to ensure the integrity of the credit reporting system is upheld.

Reporting of Repayment History Information

ARCA has become aware of a significant issue concerning an external dispute resolution scheme’s views on how RHI should be reported during certain temporary repayment arrangements.

The definition of RHI is contained in section 6V of the Privacy Act and includes, “*whether or not the individual has met an obligation to make a monthly payment that is due and payable in relation to the consumer credit.*” Paragraph 8.2 of the CR Code sets out that RHI is to be expressed by a number which corresponds to the number of days the oldest outstanding payment is overdue.

Recently, the Financial Ombudsman Service (FOS) published a determination (case number 422745)²⁵ regarding how RHI should be reported for a consumer who had failed to meet her monthly repayment obligations, in circumstances where the credit provider had agreed to allow her to catch up on her missed payments.

To understand the impact of this determination, it should be noted that when a consumer fails to meet their monthly payment obligations, credit providers regularly agree to postpone enforcement and instead allow the consumer to catch up on their arrears. Such arrangements are considered ‘indulgences’ under the contract; the credit provider does not change the consumer’s repayment obligations but decides to temporarily refrain from enacting its enforcement rights that have arisen. Indulgences are a practical and responsive approach to dealing with missed payment obligations. They allow the consumer the benefits of making amends on their arrears and keeping the credit product, and they allow the credit provider the benefit of keeping the debt for its full term, as well as maintaining a positive consumer relationship.

The recent FOS determination suggests that during indulgences, a credit provider should report that a consumer has **not** failed to meet their monthly repayment obligations. Our view is that the FOS determination is inconsistent with contract law, and it confuses the two distinct concepts of varied obligations and postponed enforcement.

²⁵ <https://forms.fos.org.au/DapWeb/CaseFiles/FOSSIC/422745.pdf>

The FOS approach to reporting RHI during indulgences would provide such an inaccurate reflection of the consumer's repayment behaviour that it would completely undermine the purpose and value of comprehensive credit reporting.

The following example illustrates the potential impact of this approach to reporting RHI.²⁶

Consumer Kevin goes on holiday overseas and misses three monthly repayments of \$400 per month, due in September, October and November under his car loan contract. As a result, on his return from overseas, Kevin receives a notice of default from his car finance credit provider. Kevin calls his car finance credit provider and requests to negotiate postponement of the credit provider's enforcement rights. Kevin explains his recent holiday and promises to make repayments of \$600 per month, for six months, to catch up on his three missed repayments. The car finance credit provider agrees to postpone exercise of its enforcement rights under section 94 of the NC Code²⁷.

Under the FOS approach, Kevin's RHI would be reported as current and up to date as soon as the credit provider agrees to postpone its enforcement rights. Therefore RHI would not reflect that Kevin has missed three repayments, nor that he has accrued \$1200 in arrears that is due and payable in addition to his ordinary obligation of \$400 per month, nor that the credit provider's enforcement rights have been activated and merely postponed pending correction of Kevin's missed repayments. A comparison of how RHI would be reported under the FOS approach and how RHI would be reported against Kevin's true obligations is below.

Month	Repayment obligation	Repayment amount	Arrears accrued	RHI reported against obligations	RHI reported according to FOS approach
September	\$400	\$0	\$400	1 payment overdue	1 payment overdue
October	\$400	\$0	\$800	2 payments overdue	2 payments overdue
November	\$400	\$0	\$1200	3 payments overdue	3 payments overdue
December	\$400	\$600	\$1000	3 payments overdue	0 payments overdue
January	\$400	\$600	\$800	2 payments overdue	0 payments overdue
February	\$400	\$600	\$600	2 payments overdue	0 payments overdue
March	\$400	\$600	\$400	1 payment overdue	0 payments overdue
April	\$400	\$600	\$200	1 payment overdue	0 payments overdue
May	\$400	\$600	\$0	0 payments overdue	0 payments overdue

The comparison illustrates that the approach suggested by FOS masks the true status of the consumer's repayment behaviour.

This problem is amplified when multiple consumer credit products are involved. By way of example: Kevin changes bank account details on his return from overseas and forgets to update his direct deposit details with his credit card provider. As a result, he misses two repayments.

²⁶ Note the example illustrates the consumer's contractual repayment amounts only and does not account for overdue fees or interest.

²⁷ National Consumer Credit Protection Act 2009 - Schedule 1

Kevin could call his credit card provider and promise to catch up on the overdue amount over the next two months. The credit card provider might accept Kevin's promise to pay and make a note on file to 'hold collections' – i.e. postpone enforcement. Under the FOS interpretation, Kevin's RHI should not reflect any delinquency after he makes the promise to pay.

Requiring RHI to be reported this way undermines the integrity of credit reporting data. The biggest concern arises if Kevin approaches another credit provider for a new credit product. If Kevin's RHI was reported in the manner suggested by FOS, the third credit provider would be completely misled by the Kevin's RHI and would not be alerted to the extent of Kevin's repayment delinquency.

Comprehensive credit reporting has been recognised by ASIC as a tool that may assist credit providers to satisfy their responsible lending obligations.²⁸ However if the approach suggested by FOS is followed, the value of data contained in the credit reporting system will be compromised. With reference to Chapter 3, Part 3-2 of the NCCP Act, it is arguable that credit providers could not be able use information contained in the credit reporting system to assess a consumer's financial situation or their repayment capacity because the credit provider would no longer have "reason to believe that the information was true."

Further, the FOS approach places competing reporting obligations on credit providers. The Privacy Act places general requirements on credit providers and credit reporting bodies to take reasonable steps to ensure the information they deal with – including RHI – is accurate, up-to-date, complete and relevant. The FOS approach requires credit providers to misrepresent whether a consumer has satisfied their repayment obligations. Reporting a consumer who has missed repayments and accrued debts in excess of their base monthly obligations, as not having missed repayments is plainly inaccurate and misleading, and disclosing such RHI is a potential offense under the Privacy Act and likely a breach under the contractual terms between the credit provider and CRB.²⁹

The FOS approach also conflicts with the Australian Prudential Regulation Authority's (APRA) obligations on credit providers that are authorised deposit-taking institutions (ADIs). APRA requires ADIs to report "impaired facilities." Impaired facilities are defined in Prudential Standard APS 220³⁰ but relevantly include a facility that is 90 days past due unless well secured. APRA's guidance on the definition of impaired facilities states:³¹

Matters bearing on the recognition of impairment

15. A facility subject to a regular repayment schedule is regarded for the purposes of APS 220 and associated guidance notes as 90 days past due when:

- (a) at least 90 calendar days have elapsed since the due date of a contractual payment which has not been met in full; and**
- (b) the total amount unpaid outside contractual arrangements is equivalent to at least 90 days worth of contractual payments.**

A facility will remain outside contractual arrangements notwithstanding any waiver of payments unless such a facility has been formally restructured.

16. A loan with a monthly repayment schedule will be 90 days past due three months from the time when the initial payment was due but not made. Facilities that do not have a contractual repayment schedule (e.g. overdrafts and revolving credit facilities) are

²⁸ ASIC Regulatory Guide 209 <http://download.asic.gov.au/media/2243019/rg209-published-5-november-2014.pdf>

²⁹ Noting that section 20N(3) of the Privacy Act requires credit reporting bodies to enter agreements with credit providers that require the credit providers to ensure the information they disclose to the body is accurate, up-to-date and complete.

³⁰ <http://www.apra.gov.au/adi/Documents/cfdocs/Final-APS-220-November-2007.pdf>

³¹ Guidance Note AGN 220.1 Impaired Facility Definitions <http://www.apra.gov.au/adi/documents/cfdocs/final-agn-220-1-november-2007.pdf>

considered 90 days past due where the facilities have remained continuously outside initially approved arrangements (i.e. 90 consecutive days, including any temporary excess approvals).

This means if the FOS approach was adopted, an ADI credit provider would have to maintain two separate reporting systems: one to report the consumer's RHI according to the FOS approach and a second to report the consumer's true repayment status for the purposes of satisfying its obligations to APRA. Dual systems are not only impractical and costly to implement but also invite potential for error in duplication, raising further concerns about the veracity of reported data and the credit provider's obligations under the Privacy Act.

Finally, as well as imposing competing expectations and obligations on credit providers, the FOS approach to reporting RHI of delinquent debtors devalues the "clean" RHI of customers who consistently meet their repayment obligations. Accordingly, the worth of reporting "positive" credit data which underpins the comprehensive credit reporting system is lost.

We have been advised by a significant number of credit providers that this issue around reporting RHI during arrangements is a road block to their transition to CCR. Those credit providers that have already transitioned to CCR have indicated they are in the process of returning to 'negative mode.' In short, this issue is halting the implementation of CCR and credit providers cannot engage with CCR until inconsistencies raised by the FOS approach are addressed and the potential for competing legal obligations is resolved.

ARCA expects that once this matter is resolved, critical mass of credit providers contributing CCR data would be achieved within a year.

Introducing a flag to reflect repayment history information after a hardship notice

Some consumers face financial hardship (due to job loss or another change in circumstances). The *National Consumer Credit Protection Act 2009 - Schedule 1, National Credit Code* (NC Code) obliges credit providers to consider whether it is necessary to change the consumer's contract (and their payment obligations) in response to financial hardship. There are only two possible responses to a hardship notice:

- a) The credit provider may agree to change the credit contract, or
- b) The credit provider may not agree to change the credit contract.

In some circumstances, the credit provider may not agree to change the credit contract, but grant the consumer an indulgence under the contract (i.e. decide to postpone enforcement of the rights that arise from the consumer's failure to meet payment obligations; as discussed above) and provide some temporary relief to the consumer. As explained above, this is not a variation to the consumer's contract.

Noting that the process to change the credit contract under the hardship provisions of the NC Code can take weeks and that financial hardship by nature arises in times of personal disruption for the consumer, it makes sense that this immediate and temporary arrangement is often the most appropriate response to a hardship notice.

The law does not make any allowance for reporting RHI during the period the credit provider is considering the hardship notice or during the temporary informal hardship arrangement. If the existing framework of RHI was followed, a consumer's RHI would be reported against their original obligations – i.e. the consumer would be reported as missing payments and their RHI would not reflect their hardship notice.

Reporting a consumer who is experiencing financial hardship as increasingly delinquent in their repayments raises concerns for industry, consumer advocates and regulators. In this case, the law around credit reporting contained in the Privacy Act is not consistent with the spirit of hardship

provisions set out under the NC Code. ARCA has identified a solution to this issue, based on the credit reporting systems of similar overseas jurisdictions and after consultation with Members and other stakeholders. ARCA is finalising a reform proposal to include a ‘flag’ in the credit reporting system. The ‘flag’ would be used to assist RHI reporting during this period – where either the credit provider is considering the consumer’s hardship notice, or when they have agreed to temporarily give relief to the consumer’s repayment obligations without accepting the hardship notice.

Introducing a hardship flag for consumers whose credit contract has been changed as a result of a hardship notice

As well as a flag for use in reporting RHI when a consumer has given a hardship notice, ARCA is proposing a flag to be included in the credit reporting system when a consumer’s credit contract has changed as a result of hardship.

In circumstances where a credit provider agrees to vary the consumer’s credit contract as a result of a hardship notice, it is correct to report the consumer’s RHI against their new payment obligations as set out in the varied contract. We do not suggest the flag at RHI would be appropriate in this circumstance, as it would deny the consumer the opportunity to demonstrate good payment behaviour. However it is appropriate to alert credit providers to the consumers’ recent hardship, to ensure a comprehensive picture of the consumer’s financial situation is available when making credit enquiries. As such, ARCA proposes a hardship flag be included as part of the account information.

In short, our reform proposal is comprised of two flags:

1. RHI-level flag to be applied:
 - on receipt of the hardship notice, while the credit provider is considering whether to agree to a change in contract under Part 4, Division 3 of the NC Code
 - in circumstances where the credit provider has refused to change the credit contract under Part 4, Division 3 of the NC Code but has instead granted the consumer an indulgence under the original contract.
2. Account-level hardship flag to be applied to credit products when the contract has been changed under Part 4, Division 3 of the NC Code.

ARCA has undertaken extensive industry consultation and briefed relevant regulators (ASIC, OAIC, APRA), industry associations, consumer advocate groups and industry ombudsman schemes on the concept of a flag. ARCA expects our policy position to be finalised shortly, which will then set out further how such a flag will work in the credit reporting system.

Funding and legacy pressures

For incumbents, the time and cost required to prepare for CCR is significant. Most of these costs are internal costs around both sourcing and standardising data to be supplied into the system from their many product portfolios, and in preparing to receive and use data from CRBs. For new entrants, the path to CCR is easier because they have no legacy to upgrade, and no historical data to contribute.

Further, the resourcing for CCR transition needs to be considered within the broader context of other projects being undertaken by CPs. All credit providers, and in particular larger credit providers, are facing a range of regulatory deadlines that are prioritising regulatory compliance projects over their CCR transition projects, in part because they impact the same key people resources and systems. These pressures have come from a range of local and international sources, and the deadlines for completing these projects are often squeezing the capacity of available subject matter experts and transition windows for key banking systems.

Consequently, the positioning of the CCR project in the project pipeline has by necessity been reviewed, but we remain confident that ARCA Members are working towards an implementation timeline as quickly as possible.

The Fintech's *Priorities for reform of the Australian Financial Services Industry* paper includes the following comments in relation to industry progress towards implementing CCR³²:

"It is recommended CCR be made mandatory for large credit providers by end of 2016 and small credit providers by end of 2017."

Incumbent market participants (especially large ones) often have complex data systems. In the case of transition to CCR, there are important consumer protection mechanisms in place for credit reporting system participants to comply with, with potentially significant monetary fines in place for non-compliance e.g. for submitting inaccurate data into the system. These monetary penalties provide cause for pause for all credit providers considering the transition to CCR, with the consequent significant uplift in transferable data points, as the risk of impact from a non-compliance event may be well over \$1 million per event.

In addition, these credit providers, especially large entities, are often dealing with a range of legacy technology arrangements that need to be updated to enable transition to CCR. These costly programs of work require certainty of scope – and in the case of CCR that certainty was not provided until the ACCC approval of the PRDE came into effect on 25 December 2015. ARCA's view is that even if made mandatory, participation by all "large" CPs by end of 2016 and the whole of industry by the end of 2017 is impractical and unrealistic.

3. ADDITIONAL DATA EXCHANGE OPPORTUNITIES

An important principle of consumer credit risk management is that data holds value if it is predictive and reliable. That principle is supported by a range of global studies and has shaped ARCA's approach to enhancing the credit reporting system.

Recent research suggests that over 3.1 million Australians are 'financially excluded', meaning they lack effective insurance, access to a transaction account or are not able to access modest and responsible mainstream credit³³.

International experience suggests that an increase in the exchangeable data in the credit reporting system has the capacity to improve access to credit for minorities and other consumers that would otherwise struggle to access credit.

ARCA has provided links to some of this research in Attachment F.

ARCA has consistently advocated for the inclusion of additional predictive and reliable data into the credit reporting system. After examining the feasibility and value of including certain public and private sector data to the credit reporting system, ARCA has prioritised the following datasets which have potential to enhance the credit reporting system and provide increased value to relevant data contributors:

- a. Exchange of RHI data for utilities and telecommunications providers.
- b. Access to government debt data
- c. Access to account level data, such as balance and utilisation rates
- d. Trans-Tasman credit reporting data exchange

³² <http://fintech.treasury.gov.au/government-response-to-australias-fintech-priorities/>

³³ http://cr.nab.com.au/docs/nab_csi_measuring_financial_exclusion_in_australia_2013.pdf

A. Exchange of RHI data for utilities and telecommunications providers

For most Australians, their first experience of consumer credit is frequently through a telecommunications (mobile, landline, internet) or utilities (electricity, gas, water) account.

Allowing their repayment behaviour for these products and or services to be contributed to the credit reporting system would allow those individuals to showcase their repayment behaviour to credit providers. For those Australians who are presently excluded from mainstream credit because they do not have a 'credit history', allowing access to their currently unreported consumer credit accounts may be able to provide information about their credit worthiness to other credit providers.

The Political and Economic Research Council (PERC) have emphasised the importance of exchanging non-financial services repayment information for addressing financial inclusion³⁴:

“Expansion of the scope of credit information sharing to non-financial payment obligation histories has been shown to be perhaps the most effective avenue to financial inclusion in terms of access to short and long term credit.”

The telecommunications industry has previously acknowledged its support for this expansion of comprehensive credit reporting. During the hearings of the Senate Legal and Constitutional Affairs Legislation Committee inquiry into the then *Privacy Amendment (Enhancing Privacy Protection) Bill 2012* (Cth), Mr John Stanton, Chief Executive Officer of Communications Alliance stated the following:

“With regard to the fifth dataset, concerning repayment history information, we are proposing that telecommunications providers have the ability to opt into that regime without being licensed. This way they would be able to provide a lead indicator to other financial service providers and it would also give the telcos a better understanding of a customer’s capacity to pay before finalising the sale of products and services to them. We recommend Australia follows the New Zealand approach to repayment history information.”³⁵

This recommendation was also supported by the credit reporting/finance industry, with Steve Brown, Director, Consumer Risk Solutions, at Dun & Bradstreet, stating the following during the Senate inquiry hearing:

“We believe that credit providers other than those covered by the NCCP legislation should have the ability to contribute and receive comprehensive credit-reporting information. The overwhelming evidence from data studies around the globe demonstrates that, where telecommunications and utility payment information is available to lenders, it improves the ability of minority groups and the credit-underserved to get access to mainstream credit. This occurs by allowing individuals who may not yet have a financial service account to demonstrate creditworthiness through the conduct of their monthly account payments. This track record, once established, may be sufficient to give a bank confidence to provide a loan that would otherwise not be available, forcing many individuals to turn to more exploitative credit providers.”³⁶

These views were also reflected in ARCA’s submission to both that Senate inquiry³⁷, and the Financial System Inquiry³⁸. ARCA has noted that more information makes it easier to understand

³⁴ Turner, Varghese & Walker. “Financial Inclusion Through Credit Reporting”, PERC, April 2010, page 10

³⁵ Official Committee Hansard, Senate, Legal and Constitutional Affairs Legislation Committee, Privacy Amendment (Enhancing Privacy Protection) Bill 2012, Friday 10 August 2012, page 16

³⁶ Turner, Varghese & Walker. “Financial Inclusion Through Credit Reporting”, PERC, April 2010, page 22

³⁷ ARCA, Submission on the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, July 2012

³⁸ <http://www.arca.asn.au/docs/607/financial-system-inquiry-arca-submission>

an individual's credit commitments and enhances responsible lending outcomes, and evidence from other markets is that more informed credit decisions have driven positive economic activity.

Research from PERC is also supported by the work undertaken by the World Bank and Bank of International Settlements (BIS) through the Credit Reporting Standards Setting Task Force. The findings of this task force are that effective participation in the credit reporting system can drive benefits for consumers and withholding data from the system could potentially lead to organisations not subject to reciprocity arrangements to contribute incomplete and inaccurate information³⁹.

PERC's research has demonstrated that full-file comprehensive credit reporting (including repayment information for telecommunication and utility providers) increases lending to the private sector more than other reporting regimes, and is better for loan performance. This is because the use of more information tackles one of the key problems inherent in lending: imprecise knowledge of a borrower's likelihood of repaying. In turn, there can be greater lending because of the lower rates of delinquency and default⁴⁰.

In fact, PERC have emphasised the utility of non-financial service provider information (credit reporting information contributed by non-ASIC licensed credit providers, in the Australian context) for improving financial inclusion, as follows:

"Expansion of the scope of credit information sharing to non-financial payment obligation histories has been shown to be perhaps the most effective avenue to financial inclusion in terms of access to short and long term credit"⁴¹.

PERC's views are based on simulations conducted involving utility and telecommunications repayment data. Their findings consistently showed that more information in the system results in better credit decisions, as follows:

"The results of these simulations consistently indicate a sizable reduction in the ability of lending systems to identify the good risks from bad risks with shifts from a comprehensive full-file data to negatively only or segmented data. Barron and Staten, using US data, compared the findings of a simulated negative-only reporting system with a full-file, comprehensive system and found that for a three percent default target, a negative-only reporting system accepts 39.8% of the applicant pool, whereas a full-file system would accept 74.8% of the pool."⁴²

Importantly, PERC has also considered whether the inclusion of those consumers traditionally excluded from credit has resulted in greater rates of default amongst these consumers – presumably on the basis that the reason for their exclusion was that they ought never have been provided credit in any case. PERC has found that the use of new data does not lead to above average levels of over-extension in the new-to-credit population. Instead, PERC found that inclusion of alternative data is most likely to help minority and low income consumers obtain access to affordable mainstream credit⁴³.

PERC found no evidence that those new to credit gaining access to credit because of alternative data would experience increased financial difficulty over time. In this regard, PERC have stated:

"... [w]e find no evidence that gaining access to mainstream credit via alternative data on average harms consumers. On the contrary, the access itself combined with score changes over time suggest that, on average, consumers benefit."⁴⁴

³⁹ World Bank, "General Principles for Credit Reporting", September 2011

⁴⁰ Turner, Varghese & Walker. "Financial Inclusion Through Credit Reporting", PERC, April 2010

⁴¹ Turner, Varghese & Walker. "Financial Inclusion Through Credit Reporting", PERC, April 2010, page 10

⁴² Turner, Varghese & Walker. "Financial Inclusion Through Credit Reporting", PERC, April 2010, page 10

⁴³ Michael Turner, Patrick Walker & Katrina Dusek, "New to Credit from Alternative Data", PERC, March 2009

⁴⁴ Michael Turner, Patrick Walker & Katrina Dusek, "New to Credit from Alternative Data", PERC, March 2009

In this regard, PERC's research has highlighted how financial exclusion is more prevalent in certain minority groups including young adults with no credit history, immigrants with little credit history, the elderly, divorcees or widows, ethnic minorities, and low income earners. PERC has noted that these consumers all tend to pay utility and telecommunications bills but where this repayment information is not included in the credit reporting system, the only information that is reported about these products would be if a default event occurred. "Given insufficient data, the default assumption of lenders is that no [repayment information] equals high risk. Such applicants are almost always rejected."⁴⁵

PERC's research also demonstrates that the benefit for these types of accounts (utility and telecommunication data) is that customers are more likely to pay when they know their credit file is impacted by their financial habits. A PERC study demonstrates that 50% of consumers are "much more likely" or "somewhat more likely" to prioritise payment of utility or telecommunication bills if they knew the information was to be reported to credit reporting bodies⁴⁶.

In 2012, PERC collaborated with Dun & Bradstreet to consider the impact of more comprehensive reporting in Australia and New Zealand⁴⁷. The research looked at what percentage of applicants would be considered risky borrowers when utilising positive information compared to the traditional 'negative' credit reporting system. The data used is from Australian credit providers (and a telecommunication company) utilising data from 2008 and 2009 across a sample size of 1.8 million Australians.

The results of this study suggest an increase of credit acceptance by 20% in proportional terms, against a target default rate of 3%, where telecommunications account data was reported.

The report also found that the Australian market performed in much the same way as the United States market, in terms of the impact of non-financial data on the credit system. However, given the more recent introduction of repayment history information into the Australian market, it was considered that the introduction of telecommunications account repayment history would likely have an even greater impact on credit decisions than it would in the United States⁴⁸.

PERC concluded that there was a very strong case for introducing telecommunications account repayment data into the credit reporting system:

"... [b]eyond the increase in model performance and the increase in acceptance among records scoreable with and without the telecommunications data, a good number of consumers would be able to begin building the fair file credit record as telecommunications data is reported. This will become more and more important as Australia shifts to more comprehensive reporting. Since having no information on file is viewed much less favourably in a more comprehensive credit sharing environment than in a negative only environment, in which a lack of information can be viewed as a lack of derogatory information. So the reporting of non-financial account data (such as from telecommunication and utility accounts) will become ever more important in Australia and New Zealand."⁴⁹

⁴⁵ Michael Turner, Patrick Walker & Katrina Dusek, "New to Credit from Alternative Data", PERC, March 2009, page 6

⁴⁶ Michael Turner, Patrick Walker & Katrina Dusek, "New to Credit from Alternative Data", PERC, March 2009

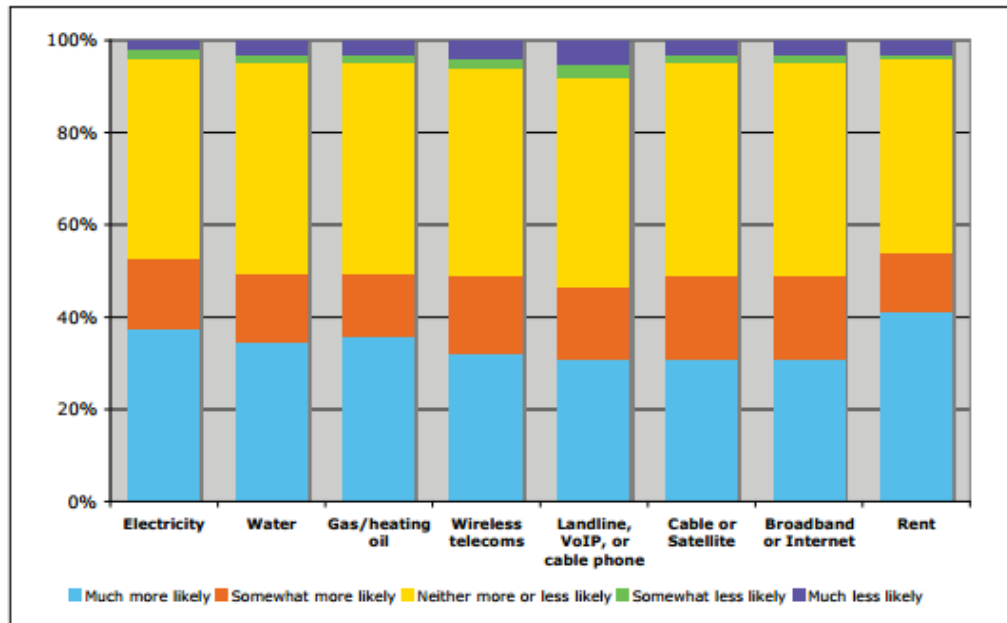
⁴⁷ Michael Turner, Patrick Walker, Sukanya Chaudhuri, Joseph Duncan, Robin Varghese, "Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand", PERC, 2012

⁴⁸ Turner, Walker, Chaudhuri, Duncan & Varghese. "Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand", PERC, 2012, page 20

⁴⁹ Turner, Walker, Chaudhuri, Duncan & Varghese. "Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand", PERC, 2012

PERC identified that the benefits flowing from the expansion of comprehensive credit reporting apply to both credit providers and consumers. For those non-financial credit providers, there is an increased prioritisation of payment obligations when payment behaviour is reported. For customers, on-time payments are rewarded and identified, as opposed to only default events being identified⁵⁰.

Figure 1: Repayment likelihood if reporting repayment history⁵¹



In the United States, PERC has conducted two further studies of non-financial companies to ascertain the impact reporting repayment information had on these organisations. The analysis identified that in the case of the first company, NICOR Gas, the following could be observed after they began reporting account repayment information:

- A 20% decrease in net bad debt over 3 years;
- A decrease in late payments and increase in timely payments, with few customer disputes; and
- Minimal implementation costs and increased efficiency in daily operations⁵².

The second company, DTE Energy, similarly experienced an improvement in outstanding accounts. However, DTE Energy also recorded a significant increase in new accounts, particularly those for customers with no prior credit history – with this increase attributed to the move to comprehensive credit reporting⁵³.

⁵⁰Turner, Walker, Chaudhuri, Duncan & Varghese. “Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand”, PERC, 2012, page 15

⁵¹Turner, Walker, Chaudhuri, Duncan & Varghese. “Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand”, PERC, 2012, page 47

⁵²Turner, Walker, Chaudhuri, Duncan & Varghese. “Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand”, PERC, 2012, page 33

⁵³Turner, Walker, Chaudhuri, Duncan & Varghese. “Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand”, PERC, 2012, page 36

In light of this extensive research, it is clear that the introduction of comprehensive credit reporting in Australia to encompass non-ASIC licensed credit providers will have economic and consumer benefits.

B. Access to government debt data

ARCA considers there are significant benefits to including certain public sector data in the consumer credit reporting system. In particular, information regarding individuals' government debts would provide valuable data to comprehensive credit reporting.

Presently non-reporting of government debts skews information about an individual's creditworthiness. Credit providers are reliant on the individual to self-disclose this debt. Where that does not occur, this hampers the ability of a credit provider to accurately gauge the risk associated with the advance of credit. This is particularly so given that government debts are often paid in priority and can often be deducted directly from wages, before those funds are transferred to an individual.

Incorporating this kind of public sector information also has a clear benefit to government agencies. As it stands, the non-reporting of government debts to the credit system means the consumer may consider these debts a lesser priority – as it may be perceived that there is no impact on a credit file or credit score, creating fewer consequences for non-payment.

This issue was discussed in an Australian Financial Review article entitled "ATO wants to name debtors". In this article, the following growth in tax debt is identified:

"[Total] tax debt jumped 6.5 per cent from \$16.6 billion in 2011-2012 to \$17.7 billion in 2012-13. The growth in debt has in part been because total tax collected has also been rising. The taxman collected \$311.7 billion in net tax in 2012-13, an increase of 3.6 per cent on 2011-12.⁵⁴"

For consumers, only 69.1% of individuals paid their tax liabilities in full by the due date for 2014-2015 tax year⁵⁵. The Australian Taxation Office has made statements about the use of credit reporting to tackle these tax debts. Mr Geoff Leeper, Second Commissioner for the Australian Taxation Office, when discussing the general trend of increasing collectable debt and how to tackle it, commented as follows:

"One of the things we think might be at play here is that, because the fact of a debt to the tax office cannot be disclosed to the markets because of the secrecy provisions, there are no credit reference consequences from being in debt to the tax office. You certainly would get failure to lodge or general interest charge consequences, but being in debt to us does not affect your credit rating. This is a matter for government to consider at some point. The only way around it that we can think of is to propose that the Commonwealth as an entity have the ability to advise a credit market, 'Geoff owes \$41,000', without disclosing the nature of that debt.

...

It is all covered by the secrecy provisions, so unless we can construct some other way of advising the credit markets – but, of course, all you are doing then is trying to elbow your way to the front of the queue, and the small business person is still trying to pay the bank, the material supplier and things. So it is not a simple issue. We did notice that collectable debt went up as a consequence of the global financial crisis, and certainly the Small Business Association – correctly, in my view – praised the tax office for taking a more accommodating stance on debt during that particular event. We are not collectively out of

⁵⁴ Australian Financial Review, "ATO wants to name debtors", 13 March 2014, p17

⁵⁵ <https://annualreport.ato.gov.au/02-performance-reporting/delivering-our-activities/fostering-willing-participation/supporting#Liabilities>

the woods yet, but you would expect that at some point on-time payment and on-time debt performance should now be improving. It is a combination of factors. But we do think one of the main things is that a debt to the tax office, whilst it sits on the books, does not actually have credit reference implications. That is a policy matter for governments to consider.⁵⁶

C. Access to account level data

Access to account level data, such as balance, utilisation and repayment amount, will show how a consumer is managing their credit arrangements, rather than simply give information on what arrangements they have in place. Currently Australian lenders are unable to access this information in credit reports under our credit reporting legislative framework.

Credit utilisation data relates to how frequently a credit product is being accessed, and the balance of the credit account as reported to a credit reporting body. In their 2007 report to Congress, the US Federal Reserve had this to say regarding the utilisation of account balance in the credit reporting system:

“When evaluating credit history, creditors also consider the type and amount of debt an individual has and the proportion of available credit in use (credit utilization). For revolving accounts, credit utilization is measured as the outstanding balance divided by the credit limit, which is the maximum amount the individual is authorized to borrow on the account. For mortgage and instalment accounts, credit utilization is generally measured as the unpaid proportion of the original loan amount. High rates of credit utilization may reflect a financial setback, such as a loss of income or an inability to manage debt, and thus are generally viewed as an additional risk in credit evaluations.”⁵⁷

Giving access to an account balance gives lenders more information to assess the risk of a prospective loan. While repayment history information allows a lender to assess a potential borrower’s reliability in meeting obligations, credit utilisation and repayment rate represents a borrower’s ability to manage debt. Access to this information could be a useful component that enables better compliance with responsible lending requirements. This was expressed by MasterCard in its submission to ALRC Report 108 where it stated:

“Without allowing current balance information to be stored on an individual’s credit report, lenders do not have a source to confirm whether the statement is an accurate reflection of the borrower’s true position.”⁵⁸

National Australia Bank’s submission on this topic was:

“...the balance of credit account and/or associated limit utilisation would provide for an even more informed lending decision to ensure borrowers are not placed in situations where they cannot meet their obligations. This should be considered as a future enhancement.”⁵⁹

Credit scores are calculated differently depending on the scoring system used, however both major credit scoring models in the USA (FICO and VantageScore) place great importance on credit utilisation data to generate a credit score. Under the FICO credit scoring system 30% of a potential

⁵⁶ Standing Committee on Tax and Revenue, Australian Taxation Office annual report 2012-2013 – statements by Mr Geoff Leeper, Second Commissioner, People Systems and Services Group, Australian Taxation Office. 28 February 2014, pages 7 & 8 of 14

⁵⁷ Board of Governors of the Federal Reserve System “Report to Congress on credit scoring and its effects on the availability and affordability of credit” (Report, Federal Reserve System, 2007) Page 25.

⁵⁸ MasterCard Worldwide, *Submission PR 425*, 7 December 2007

⁵⁹ National Australia Bank, *Submission PR 408*, 7 December 2007

borrower's credit score is based on credit utilisation data.⁶⁰ Under the VantageSecure scoring system the potential borrower's credit utilisation data is responsible for 23% of the generated credit score.⁶¹

With credit utilisation data having such a substantial impact on credit scores in other jurisdictions, ARCA believes that such information should be introduced to the credit reporting system in Australia.

ARCA put to the ALRC review of privacy in *Report 108* (published August 2008) that the model of CCR adopted by Australia should be an interim measure, and further reform should be pursued in due course.

It is critical that Australia keeps pace with global best practice for credit risk assessment, which means giving credit providers the best information available to make their decision.

D. Trans-Tasman credit reporting data exchange

ARCA members are supportive of the introduction of credit reporting data sharing arrangements between Australia and New Zealand.

In Australia, credit reporting bodies are not permitted to share credit information with organisations without an Australian link. In New Zealand, the regulatory framework recognises that information can potentially be shared extra-territorially, but the best mechanism to facilitate this is not yet clear. This lack of trans-Tasman cooperation in the regulation of credit reporting can affect cross-border credit decision-making. These restrictions mean that a New Zealand citizen resident in Australia has no way to allow an Australian credit provider to access their New Zealand credit history.

The total accumulated bilateral investment of both countries is well over AU\$90 billion⁶². There is a significant flow of people between Australia and New Zealand. An estimated 647,000 New Zealand citizens are currently living in Australia, and there are around 65,000 Australians in New Zealand⁶³.

Currently, credit providers in Australia that assess new resident credit applications make assessments on information that excludes borrowing behaviour that may be available in the credit reporting system in New Zealand. Having access to this information would allow credit providers to comply more easily with their responsible lending obligations.

There are strong economic and public policy benefits to be gained through introducing arrangements to provide for the exchange of consumer credit data between Australia and New Zealand.

In its December 2012 report, *Strengthening Economic Relations between Australia and New Zealand*, the Productivity Commission stated⁶⁴:

"...governments should ensure that the regulatory settings applying to data and digital content (and other relevant areas) achieve domestic policy objectives without unnecessarily impeding..." (Page 128)

⁶⁰ Sandra Block, *Here's how you can shape your credit score*, (29 January 2008) USA Today <http://usatoday30.usatoday.com/money/perfi/columnist/block/2008-01-28-credit-score_N.htm>

⁶¹ LaToya Irby, *Understanding Credit Utilization*, <<http://credit.about.com/od/creditreportscoring/a/credutilization.htm>>

⁶² <http://dfat.gov.au/trade/resources/Documents/nz.pdf>

⁶³ <http://dfat.gov.au/geo/new-zealand/Pages/new-zealand-country-brief.aspx>

⁶⁴ Australian Productivity Commission and New Zealand Productivity Commission 'Strengthening trans-Tasman economic relations' (Joint Study, November 2012) 9.

In this report, the Productivity Commission highlighted the problems that New Zealanders face when residing in Australia. New Zealanders can come to Australia without a visa application process, but are not automatically eligible to claim Australian citizenship in that they face the same restrictions as other immigrants. This results in a “large, unskilled workforce with heavily restricted rights, and which costs the federal and state governments very little”⁶⁵.

As noted in the Explanatory Memorandum to the Amendment Act, there are significant restrictions on the transference of credit reporting data beyond Australia:

“The credit reporting system is restricted to information about consumer credit in Australia and access to the credit reporting system is only available to credit providers in Australia. The credit reporting system will not contain foreign credit information or information from foreign credit providers (even if they have provided credit to an individual who is in Australia), nor will information from the credit reporting system be available to foreign credit reporting bodies or foreign credit providers.”⁶⁶

These restrictions mean that, for a New Zealand citizen residing in Australia, there is no way for that citizen to allow an Australian credit provider to search for their New Zealand credit report and corresponding credit history. Many Australian banks have a presence in New Zealand, however, the restrictions on exchange of data apply even in this instance.

The expansion of credit reporting information to allow for trans-Tasman data flow is strongly supported by industry. In the Senate Legal and Constitutional Affairs Legislation Committee Inquiry into the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, Mr Steve Brown, Director, Consumer Risk Solutions at Dun & Bradstreet, stated:

“We believe that it is desirable to allow credit providers on both sides of the Tasman the opportunity to receive credit files where a migrant from either country applies for credit. This would effectively fast-track their ability to establish lines of credit in their new home.”⁶⁷

Further, we note the views expressed by the then government in the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

“Consideration will be given to the sharing of credit reporting information with New Zealand, which has a very similar credit reporting system and close economic ties with Australia. When this occurs, it will be necessary to develop specific legislative provisions to amend the credit reporting system set out in Part IIIA to establish the arrangements by which credit reporting information will be shared with New Zealand.”⁶⁸

Given the proposed data flow is between two countries only, ARCA considers that such restrictive legislation in Australia and New Zealand should not hinder these data flows. This is particularly so given the economic benefits that will be derived from enabling this exchange of information. With such a large number of New Zealanders potentially participating in the Australian credit market, enabling the collection of their New Zealand credit histories would increase this rate of participation and the efficiency of the consumer credit market.

⁶⁵ Robert Burton-Bradley, “New Zealanders, Australia’s ‘Underclass’”, New Matilda, 14 March 2013

⁶⁶ Privacy Amendment (Enhancing Privacy Protection) Bill 2012, Explanatory Memorandum, Page 92

⁶⁷ Official Committee Hansard, Senate, Legal and Constitutional Affairs Legislation Committee, Privacy Amendment (Enhancing Privacy Protection) Bill 2012, Friday 10 August 2012, Page 22

⁶⁸ Privacy Amendment (Enhancing Privacy Protection) Bill 2012, Explanatory Memorandum, Page 92

The logo for the Australian Retail Credit Association (ARCA) is located in the top left corner. It consists of an orange square containing the text "AUSTRALIAN RETAIL CREDIT ASSOCIATION" in white, stacked vertically.

AUSTRALIAN
RETAIL
CREDIT
ASSOCIATION

APPENDICES

ARCA SUBMISSION

to the Productivity Commission Inquiry on Data Availability and Use

Attachment A: List of ARCA Members

As at 7 July 2016

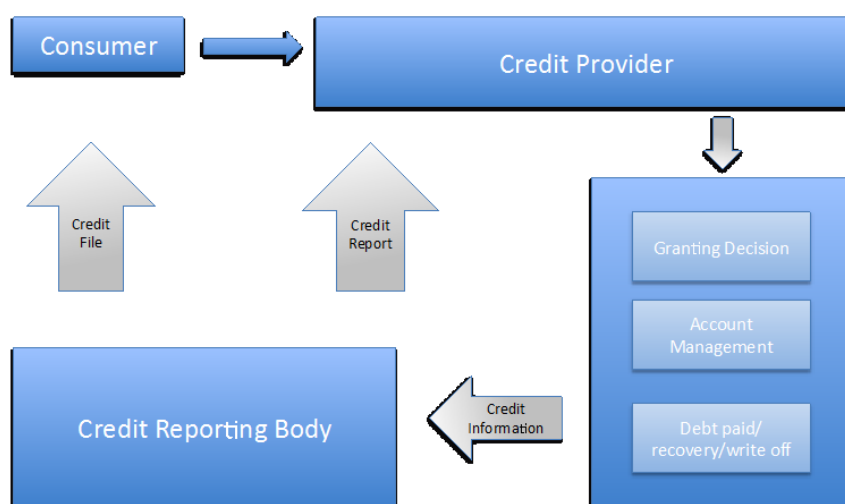
American Express
Australia and New Zealand Banking Group
Bank of Queensland Limited
Bendigo and Adelaide Bank
Citibank
Commonwealth Bank of Australia
Credit Union Australia
Customer Owned Banking Association (COBA)
Dun & Bradstreet
Experian Australia
HSBC Bank Australia
ING Direct
Latitude Financial Services
Macquarie Leasing
ME Bank
Momentum Energy
MoneyPlace
National Australia Bank Limited
RateSetter Australia
Suncorp
Toyota Finance Australia Ltd
Veda
Volkswagen Financial Services
Westpac Banking Corporation

Attachment B: Background to credit reporting in Australia

Credit reporting – information exchange

Credit reporting is a system whereby each CRB collects credit information about consumers from CPs, and makes aggregated credit information available to CPs on a commercial basis. (Consumers can obtain basic access to their own credit information held by a CRB for free or pay to receive extended access.) The Australian credit reporting system is regulated by Part IIIA of the *Privacy Act 1988* (the *Privacy Act*).⁶⁹

A typical credit reporting cycle is described below:⁷⁰



The credit reporting cycle and the agreements that exist within each CRB and CP within the credit-reporting network have a direct impact on the information available to participants

The relationship between a CP and a CRB is a commercial one governed by mutual services agreements. These services agreements are often customised as part of the negotiation process when settling the final arrangements for how each CRB and CP will give and receive consumer information.

The role of the CP in the credit reporting system is that of both:

- a data supplier, in that the CP contributes credit information to a CRB into the credit reporting system;⁷¹ and
- a data user, in that a CP subscribes to commercial services provided by CRBs for the receipt of credit reporting information and other information-related services.

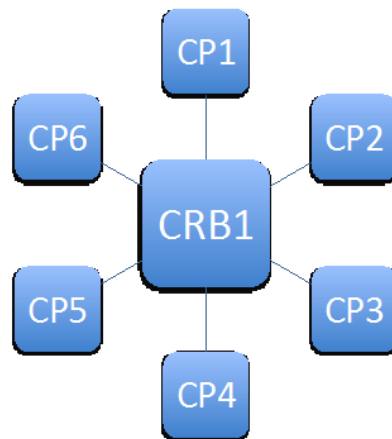
⁶⁹ Under s6G of the *Privacy Act*, CPs include banks, finance companies and any organisation or small business operator who provides credit for goods or services on deferred repayment terms of 7 days or more. The latter category of organisation includes telecommunication and utilities companies and small businesses such as lawyers, accountants etc and trade creditors. Real estate agents, general insurers and employers are specifically excluded from being classified as CPs.

⁷⁰ Figure from Centre for European Policy Studies, European Credit Research Institute, Steinbauer & Pyykkö, “Towards Better Use of Credit Reporting in Europe”, CEPS-ECRI Task Force Report, September 2013, page 12

⁷¹ CPs collect credit information about consumers when the consumer applies for credit and as the consumer (upon being granted credit) utilises and repays the credit.

The role of the CRB is to collect credit information and other allowable data in order to develop and provide suitable products that are in turn provided under commercial terms to that CRB's customers (being, CPs and consumers).

CRBs may receive and hold credit information about the same consumer from a number of CPs. In this way, the CRB forms what can be characterised as a "star network" that acts as a circuit among interconnected participants.



The network enables CPs within it to access credit reporting information about a consumer held by other CPs that are part of the same network (i.e. that also have commercial arrangements with the same CRB). The larger the network, the more credit reporting information about a consumer is available to CPs who are part of the network. Therefore, it is important for networks to have a certain scale in order to be able to operate effectively.

Impact of comprehensive credit reporting

More information enables lenders to more accurately price credit relative to the risk profile of the borrower. CPs can extend credit to more consumers without increasing default rates, and better match their risk appetite and pricing points to target different consumer segments. As recognised by the Financial System Inquiry, more comprehensive sharing of credit data is expected to reduce information imbalances between lenders and borrowers as well as facilitate borrowers switching between lenders, and create greater competition among lenders.⁷²

Borrowers may then have more options to access credit on more favourable terms, including at a lower cost. As noted by KPMG, more comprehensive data sharing should also reduce the current cross-subsidisation between different borrowers that arises from limited or inaccurate credit data being used to assess the credit risk of individual borrowers. This in turn, may reduce the cost of credit incurred by borrowers.⁷³

In 2010 PERC also determined that comprehensive credit reporting leads to interest rates that more accurately reflect the risk profile of the individual borrower (resulting in lower rates for lower-risk borrowers; a lower average interest rate; and greater lending through reduced credit rationing).⁷⁴ This was reflected in a 2012 paper relating to the introduction of comprehensive

⁷² Financial System Inquiry – Final Report, November 2014, p191.

⁷³ KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015) p 20.

⁷⁴ Michael Turner, Robin Varghese, *"The economic consequences of consumer credit information sharing: efficiency, inclusion and privacy."* (Report, PERC, 2010), 4

credit reporting in Australia and New Zealand, which found that at lower default rates there are dramatic increases in projected credit application acceptance rates.⁷⁵

Comprehensive credit reporting will also benefit consumers through increased financial inclusion. Recent research commissioned by the National Australia Bank has demonstrated that, in 2012, 17.7% of the adult population (or 3,123,519 people) in Australia were fully excluded or severely excluded from financial services.⁷⁶ In this study, access to a moderate amount of credit, being just a credit card, was one of the key tools used to measure financial inclusion. The study found that financial exclusion had both an economic and social impact, and was also discriminatory. It denied consumers the ability to smooth consumption and protect against income shocks and financial stress and also forced those individuals to use informal arrangements or the fringe credit market, such as payday lenders.⁷⁷ Further, financial exclusion predominantly impacted younger people aged 18 to 24, students not in employment, people from non-English speaking backgrounds, and people earning between \$20,000 to \$25,000. In respect to young people who face financial exclusion, it was noted that “lack of access to mainstream products makes this group vulnerable to predatory lending products and to the loss of uninsured assets.”⁷⁸

Edgar Dunn identified that comprehensive credit reporting should improve access to credit for all creditworthy customers (including those who, due to the very limited data in the current system, previously had insufficient credit history to obtain a loan), while at the same time limiting access for consumers who may face financial difficulties if granted credit.⁷⁹

KPMG also recognised that more detailed assessments of the ability of borrowers to service debt would reduce the number of credit applications declined due to lack of credit data.⁸⁰ In turn, this could provide considerable social benefits to those currently marginalised by the financial system. There would be more scope to tailor lending products and offers to certain types of borrowers and thereby improve access to credit. More granular data and deeper analytics associated with it may also assist CPs to develop new or improved credit products and payment features that better serve niche markets in the sector than is currently possible with existing limited credit data exchange. There could therefore be increased financial participation, not just from those marginalised by the financial system, but also other niches in the sector as tailored and innovative products are made available.

Benefits for credit providers

For lenders (i.e. CPs), 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, it enables lenders to more accurately price credit, taking into account the specific risk characteristics of the borrower. Akerlof recognised that creditors who lend on poor information have to incur additional costs in enforcing their security interests.⁸¹ In a competitive lending market, more accurate pricing could be expected to benefit the lender by lowering the risk of irresponsible lending.

Additionally, it is expected comprehensive credit reporting will lead to:

- expansion of the credit sector by increasing lender confidence in credit assessment and management processes, thus allowing greater amounts of credit to be extended to

⁷⁵ Michael Turner, Patrick Walker, Sukanya Chaudhuri, Joseph Duncan and Robin Varghese, *‘Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand’* (Report, PERC, 2012)

⁷⁶ Financial exclusion is defined as existing where “... [i]ndividuals lack access to appropriate and affordable financial services and products – the key services and products are a transaction account, general insurance and a moderate amount of credit”: Connolly C, “Measuring Financial Exclusion in Australia”, Centre for Social Impact (CSI) – University of New South Wales, 2013, for NAB, page 6.

⁷⁷ *Ibid*, page 9

⁷⁸ *Ibid*, page 7

⁷⁹ Centre for International Economics, Edgar, Dunn and Company, *‘Options for implementation of comprehensive credit reporting in Australia’* (Report, Centre for International Economics, 2006), 43.

⁸⁰ KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015), p19.

⁸¹ See George Akerlof (Nobel Prize winner and economist), “The Market for “Lemons”: Quality Uncertainty and the Market Mechanism”, *The Quarterly Journal of Economics*, Volume 84, Issue 3 (Aug 1970), 488 - 500

borrowers for worthwhile purposes (reducing credit rationing), whilst at the same time reducing the incidence of over-lending due to limited or inaccurate data available in the application assessment process.⁸² As noted in the Financial System Inquiry Final Report, empirical evidence suggests that comprehensive credit reporting reduces the likelihood that originated loans will default (reducing interest rates) and/or increases the availability of credit.⁸³

- more efficient pricing – enabling the price of credit (interest rates and related fees and charges) to better reflect the true costs and risks of providing credit;⁸⁴
- reduction in fraud – as improved information flows, it would enable fraud to be detected sooner;
- wider access to credit across income distribution; and
- greater innovation in financial services.⁸⁵

Benefits to regulators

As set out in the KPMG report, maximising the data available to CRBs, and therefore CPs, might assist ASIC when assessing compliance with responsible lending requirements. By allowing for more accurate risk-based pricing, it also has the potential to bring even those with a difficult credit history into the mainstream financial system, rather than relying on payday lenders; and would provide a sound quantitative standard for the use of credit reports in responsible lending.⁸⁶

Under the current process, an assessment of whether a CP has acted as a responsible lender depends on an assessment of the nature of the enquiries made and analysis undertaken by the CP before making a credit decision. This can be a difficult and time-consuming process and is inherently subjective because there is not an accepted industry standard on what constitutes a proper assessment. The recent Federal Court of Australia decision involving ASIC and Cash Store Pty Ltd⁸⁷ highlights some of these challenges. In this case, a sample of 281 of Cash Store's credit contracts was reviewed by ASIC. None of the contracts involved obtaining a credit report for the applicants. The Court held that there had been a failure to make the required credit assessment in 277 contracts.

Although the case involved payday lending, it shows how, from a regulator's point of view, enforcement of responsible lending obligations could be simplified if there was ready access to comprehensive credit information by all CPs.

As set out in the KPMG report, the quality of data and associated credit risk analysis is also relevant in the implementation of macro-prudential policy by financial sector authorities, including in relation to capital ratio and exposure limit requirements.

Benefits to the economy at large

Comprehensive credit reporting can result in decreased levels of over-indebtedness, contributing to lower credit default rates.⁸⁸ For example, when analysing default rates in Hong Kong following the introduction of comprehensive credit reporting in 2003, Edgar Dunn noted that default rates had

⁸² Centre for International Economics, Edgar, Dunn and Company, 'Options for implementation of comprehensive credit reporting in Australia' (Report, Centre for International Economics, 2006), 43

⁸³ Financial System Inquiry – Final Report, November 2014, p191.

⁸⁴ Centre for International Economics, Edgar, Dunn and Company, 'Options for implementation of comprehensive credit reporting in Australia' (Report, Centre for International Economics, 2006), 43

⁸⁵ ACIL Tasman, 'Dealing with Debt Default: An analysis of the Economic Benefits of Allowing Comprehensive Credit Reporting in Australia' (Report, ACIL Tasman, 2004), 3

⁸⁶ KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015), p. 21.

⁸⁷ *ASIC v The Cash Store Pty Ltd (in liquidation)* [2014] FCA 926

⁸⁸ Explanatory memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, p3

fallen from 7.20% to 4.00% by 2004⁸⁹. Similar findings have been observed in Australia – PERC conducted a study utilising data from Australian credit provider sources from 2008 to 2009, sampling information from 1.8 million Australians, and found that where more information is available to a CP, the default rate is considerably lower.⁹⁰

Enhanced data exchange also enables financial institutions to undertake stress testing analysis and determine their capital position on a risk-adjusted basis, improve their ability to manage credit risks and facilitate sound credit allocation decision-making. As set out in the KPMG report, this, in turn, promotes macro-financial stability and enables a more productive allocation of resources in the economy, as well as reducing the risk of fluxes in asset markets.

⁸⁹ Centre for International Economics, Edgar, Dunn and Company, *Options for implementation of comprehensive credit reporting in Australia* (Report, Centre for International Economics, 2006), 17

⁹⁰ Michael Turner, Patrick Walker, Sukanya Chaudhuri, Joseph Duncan and Robin Varghese, *Credit Impacts of More Comprehensive Credit Reporting in Australia and New Zealand* (Report, PERC, 2012)

Attachment C: Overseas comparisons of CCR

ARCA has examined the operation of CCR in a range of international markets.

Hong Kong

Since 2 June 2003, the sharing of comprehensive consumer credit data – other than positive mortgage loan data – has been permitted under the *Code of Practice on Consumer Credit Data*, approved by the Privacy Commissioner for Personal Data under the *Personal Data (Privacy) Ordinance*. Positive mortgage loan data was added to the Code on 1 April 2011.

The Hong Kong Monetary Authority (HKMA) maintains a guideline on *The Sharing and Use of Consumer Credit Data through a Credit Reference Agency*, which “expects” all deposit-taking institutions to “participate as fully as possible in the sharing and use of consumer credit data” including positive credit data. The HKMA will consider an institution’s participation in data exchange in assessing its suitability for authorisation under the Banking Ordinance, making participation effectively mandatory.

In 2006 the HKMA found that positive data sharing had led to a significant substitution of non-card loans for credit card rollovers, resulting in lower interest rates, representing substantial interest savings for consumers.⁹¹

Japan

Historically, credit reporting in Japan has been fragmented, with a variety of CRBs and exchanges operating in different sectors and sharing mostly negative and minimal positive information, if any, with each other. In 2007 the Information Policy Institute found that:

“Japan’s current market for consumer credit data has many shortcomings. Unlike the US market where are three main credit bureaus (that all compete directly with each other) in which consumer payment data from all sectors flow, Japan’s credit bureaus are relatively segmented, with some having some types of payment data and others having other types of data. The data which is exchanged between the different bureaus is often negative only or incomplete.”⁹²

A high rate of over-indebtedness, defaults and bankruptcies, often resulting from high interest rates and concurrent loans from different lenders, has prompted repeated government intervention, most recently amendments to the *Money Lending Business Act 1983* in 2006 and the *Instalment Sales Act 1961* in 2008, which constrain total non-bank unsecured loans and credit card limits based on an individual’s income and living costs. In order to administer this limit, the amendments:

- require lenders to report borrowing activity to a designated CRB; and
- require CRBs to exchange certain positive data on request from another CRB’s subscriber CP.

This government intervention reduced outstanding loans per debtor by more than 50% and the number of debtors with 5 borrowings or more by 80% between 2007 and 2012.⁹³ Personal bankruptcies fell by half between 2003 and 2009.⁹⁴

⁹¹ HKMA, “Positive credit data sharing”, 9 September 2006. At <http://www.hkma.gov.hk/eng/publications-and-research/reference-materials/viewpoint/20060209.shtml>

⁹² Turner, M, Varghese, R and Walker, P, Information Policy Institute, “On the impact of Credit Payment Reporting on the Financial Sector and Overall Economic Performance in Japan”, March 2007, page 14.

⁹³ Oya T, Financial Services Agency, “Financial Consumer Protection in Japan”, 14 December 2014. At <http://www.oecd.org/daf/fin/financial-education/HKSeminar2012S4Oya.pdf>

⁹⁴ Bloomberg, “Japan’s Personal Bankruptcies Fall 2.5% as Consumer Debt Drops”, 18 February 2010. At <http://www.bloomberg.com/apps/news?pid=newsarchive&sid=acUmUAI2bbFY>

Because mandatory credit information reporting and exchange has been accompanied by other measures such as lowered interest rate caps and prescribed limits on individual indebtedness, it is difficult to estimate the contribution of more comprehensive exchange to these outcomes. However, it is likely that the increase in the exchange of comprehensive credit information has promoted more efficient and responsive consumer lending within the overall reduction in loans.

It has been reported that the current Japanese government is considering removing the caps on interest rates and individual total borrowing,⁹⁵ but it is not clear whether mandatory exchange of comprehensive credit information would remain.

New Zealand

Since 1 April 2012, the disclosure of comprehensive credit information has been permitted under the *Credit Reporting Privacy Code 2004* issued by the Privacy Commissioner under the *Privacy Act 1993 (NZ)*.

On 8 March 2013 a *Heads of Agreement in respect of Principles of Reciprocity for Comprehensive Credit Reporting* was signed by 10 credit providers – including all major banks except the largest, ANZ – and all three credit reporting agencies. It is not legally binding but operates on the understanding that:

- CPs will be entitled to receive comprehensive credit information to a level commensurate with the completeness of the information they have provided, summarised as “You give all you have – you get all”;
- signatory CPs will work towards providing comprehensive credit information on all their product lines as soon as their systems and processes permit it; and
- signatory CRBs will promote adherence to the Principles of Reciprocity and endeavour to include them in their subscriber agreements.

The existence of the reciprocity document has encouraged participation in comprehensive credit reporting, with all ten of the CP signatories to the Heads of Agreement, and a number of other CPs, notifying their customers that they have commenced, or intend to commence, comprehensive credit reporting. Veda estimates approximately half of all retail credit accounts are now being reported under CCR in New Zealand⁹⁶.

South Africa

CPs and CRBs are both regulated by the National Credit Regulator under the *National Credit Act 2005*, the *Consumer Protection Act 2008* and the *Protection of Personal Information Act 2013*. The sharing of positive credit information is expressly permitted by the National Credit Act.

Further, all CPs are required to provide basic information about the opening and closing of all credit agreements either to a CRB or to the national register. The National Credit Regulator may request aggregated consumer credit information from any CRB for the purposes of research into credit issues.

Data exchange is industry-regulated primarily through the constitution of the Credit Providers Association (CPA), under which CP members agree to submit comprehensive data to all CRBs, and CRB members agree not to provide this data except to a CPA member. CRBs are further regulated by the *Credit Industry Code of Conduct 2006* developed by the Credit Bureau Association (CBA).

⁹⁵ Bloomberg, “Japan’s Ruling Party to Weigh Loosening Consumer Lending Law”, 25 April 2014. At <http://www.bloomberg.com/news/2014-04-25/japan-s-ruling-party-to-consider-loosening-consumer-lending-law.html>

⁹⁶ Veda, “New Zealand reaches Comprehensive Credit Reporting milestone”, 7 July 2016. At <https://www.veda.com.au/insights/new-zealand-reaches-comprehensive-credit-reporting-milestone>

Technical data exchange is regulated by a Service Level Agreement between the CPA and CBA. Members who breach the CPA Constitution or the Service Level Agreement are subject to a complaints process which may result in sanctions or other penalties.

In 2012 the NCR found that the size of the credit market overall had grown substantially and consistently since the introduction of the National Credit Act, with the volume of new credit granted per quarter decreasing initially but recovering to 2007 levels. It noted that “the fact that we are currently in an economic environment that is significantly more subdued than in 2007, shows that there is an increased access to credit in the market.”⁹⁷

United Kingdom

CRBs are regulated by the *Consumer Credit Act 1974* and the *Data Protection Act 1988*, neither of which restrict the kind of information they can receive and supply. Under the *Lending Code 2012*, lenders only need to notify customers before providing basic negative credit information to CRBs, but they need customer consent for all other credit information.

All current CRBs have included adherence to the PoR in their services agreements and “have a responsibility to ensure that the only supply data in accordance with the rules”. SCOR maintains a dispute and compliance process which may result in SCOR requesting a CRB to enforce its service agreement with a CP.

In January 2016, in order to improve small business access to loans, in particular from newer non-bank lenders, the government imposed the *The Small and Medium Sized Businesses (Credit Information) Regulations 2015* which:

- require banks to provide positive credit information about SME customers on request from a CRB; and
- require CRBs to provide information about SME customers on request from a bank or from another lender who has agreed to provide reciprocal information.

No similar proposal is being considered in relation to consumer credit data at this stage.

⁹⁷ National Credit Regulator, “Ligature Review on the Impact of the National Credit Act (NCA) has had on South Africa’s Credit Market”, Final Report, June 2012.

Attachment D: The role of credit reporting in the Australian economy

A properly regulated comprehensive credit reporting system is an essential component of a well-functioning financial system.

Retail credit forms a significant part of the Australian economy. As at 31 January 2014, the total retail credit in Australia was worth approximately A\$1.48 trillion⁹⁸. Credit reporting has a significant impact on retail credit.

That is, the presence of a properly-regulated comprehensive credit reporting system results in:

- Financial risk in retail credit being identified accurately and early;
- Improved economic performance of retail credit lenders as credit is repaid, and an overall drop in debt collection or write offs;
- Barriers to financial exclusion being eroded, with minority demographic sectors, who may have once been excluded from credit, being included;
- Consumer benefit through the avoidance of over indebtedness; and
- A boost to productivity and stimulation of the economy.

The recent reforms to Australia's system of credit reporting and the introduction of comprehensive credit reporting highlight the importance of credit reporting as an economic activity. In initial consideration of these reforms and their impact on retail credit, ACIL Tasman research conducted in 2004 estimated the economic value to Australia of introducing comprehensive reporting to be A\$5.3 billion over 10 years.⁹⁹

The commencement of comprehensive credit reporting means Australia's credit reporting system is now in line with the vast majority of Organisation for Economic Co-operation and Development (OECD) countries who have introduced comprehensive credit reporting – including Canada, Germany, Hong Kong, Japan, New Zealand, Singapore, the United Kingdom and the United States.

The reforms came about as a result of a number of recommendations made by the ALRC in its 2008 examination of privacy in Australia – Report 108, *“For your information: Australian privacy law and practice”*. This report was the result of an inquiry commissioned by the former Commonwealth Attorney General, the Hon Phillip Ruddock MP, in 2006.

In considering the adoption of comprehensive credit reporting in Australia, the ALRC highlighted that such a reform would benefit Australia's economy, as follows:

“The ALRC recognises that, according to widely accepted economic theory, making more information available to credit providers will tend to increase efficiency in the market for credit. It also will assist in making credit more available to those able to repay and reduce rates of default (or both). There was no significant disagreement among stakeholders that more comprehensive credit reporting has the potential to improve risk assessment by credit providers, even among those who expressed concerns about how this improved risk assessment would be used in the credit market.¹⁰⁰”

There is a clear link between credit reporting and responsible lending. This was acknowledged by the ALRC in Report 108, which recommended that “repayment performance history only should be permitted to be contained in credit reporting information if the Australian Government is satisfied

⁹⁸ Reserve Bank of Australia, Statistical Table D2 Lending and Credit Aggregates, 31 January 2014

⁹⁹ ACIL Tasman, 2004 "Dealing with Debt Default"

¹⁰⁰ ALRC Report 108, "For your information: Australian Privacy law and practice", paragraph 55.143

that there is an adequate framework imposing responsible lending obligations in Commonwealth, state and territory legislation”¹⁰¹. As a result, the amendments to the *Privacy Act 1988* were only implemented following the enactment of the NCCP Act, and legislated responsible lending obligations.

Despite the recognition of this link, the regulation of responsible lending is quite separate from credit reporting regulation. Whereas responsible lending regulation is undertaken by the national credit regulator – the Australian Securities and Investments Commission – regulation of credit reporting is undertaken by the national privacy regulator, the Office of the Australian Information Commissioner.

The ALRC’s views on the benefits of comprehensive credit reporting are reflected internationally in reports which have considered, more broadly, the role that credit reporting plays in the economy. Each of these reports have emphasised that credit reporting, when properly developed and regulated, is essential for economic stability and growth.

In September 2011, the World Bank together with the BIS published the “General Principles of Credit Reporting” which was the product of its Credit Reporting Standards Setting Task Force. In undertaking this work, the World Bank and BIS highlighted the importance of credit reporting, as follows:

“Well functioning financial markets contribute to sustainable growth and economic development, because they typically provide an efficient mechanism for evaluating risk and return to investment, and then managing and allocating risk. Financial infrastructure (FI) is a core part of all financial systems. The quality of financial infrastructure determines the efficiency of intermediation, the ability of lenders to evaluate risk and of consumers to obtain credit, insurance and other financial products at competitive terms. Credit reporting is a vital part of a country’s financial infrastructure and is an activity of public interest.”¹⁰²

In the United States, researchers at PERC have published a number of reports which analyse and identify the connection between credit reporting and its impact more broadly on an economy.

In their March 2009 report “New to Credit from Alternative Data”, PERC identified that generally credit reporting can be used as a tool to increase credit access and stimulate growth¹⁰³.

PERC developed this reasoning in its April 2010 report “Financial Inclusion through Credit Reporting”. In this report, PERC argued that the use of credit reporting means that lending is expanded, both in who is eligible for credit and who will repay that credit. There were three macro impacts that thereafter resulted from credit reporting:

- Economic growth and stability;
- Price of credit (lower average interest rates); and
- Income distribution¹⁰⁴.

In considering these macro impacts, PERC’s ultimate proposition is that collectively this is indicative of the key role played by credit reporting, as follows:

“Credit information sharing systems are key elements of modern financial sectors infrastructure. As with other kinds of infrastructure, its scope determines in large measure the extent to which different social segments in an economy can participate within the financial system.”¹⁰⁵

¹⁰¹ ALRC Report 108, “For your information: Australian Privacy law and practice”, paragraph 55.177

¹⁰² World Bank, “General Principles for Credit Reporting”, September 2011, page 1

¹⁰³ Michael Turner, Patrick Walker & Katrina Dusek, “New to Credit from Alternative Data”, PERC, March 2009

¹⁰⁴ Michael Turner, Robin Varghese & Patrick Walker, “Financial Inclusion Through Credit Reporting”, PERC, April 2010

¹⁰⁵ *Ibid*, page 7

It should be noted that, beyond the scope of the US market, the critical role of credit reporting is founded in fundamental economic theory.

The seminal paper in this area is the 1970 publication by Nobel Prize winner and economist, George Akerlof, “The Market for “Lemons”: Quality Uncertainty and the Market Mechanism”¹⁰⁶. Akerlof examined the economic impact of ‘asymmetric information’, that is, when either party to a transaction has insufficient information to be able to make an informed decision to enter into the transaction. This is also described as ‘adverse selection’.

Akerlof surmised that the effect of adverse selection is a source of market failure, so any market with adverse selection does not operate efficiently. Inefficient markets have social consequences, for example if you buy a car that is a lemon you become less trustworthy of the dealer. You can take the dealer to some sort of court or tribunal to get recompense, but you then incur an expense in resolving the dispute. This expense would not have been incurred if the original decision to purchase had not been made. Analogously, creditors that lend on poor information may have to incur additional costs in enforcing their security interests. This places additional costs on the purchase and creates inefficiency in the market, which can be reduced if correct decisions are made by parties involved at the outset.

Recent research about the impact of financial exclusion indicates that these inefficiencies theorised by Akerlof are present in the Australian context. In turn therefore, credit reporting can be viewed as a vital economic activity which can be used to tackle the issue of financial exclusion.

This research, an ongoing study commissioned by the National Australia Bank, has demonstrated that in 2012, 17.7% of the adult population (or 3,123,519 people) in Australia were fully excluded or severely excluded from financial services. Financial exclusion is defined as existing where:

“... [i]ndividuals lack access to appropriate and affordable financial services and products – the key services and products are a transaction account, general insurance and a moderate amount of credit”¹⁰⁷.

In this study, access to a moderate amount of credit, being just a credit card, was used as tool to measure access to credit.

Financial exclusion has both an economic and social impact, as explained by the study:

“Credit is a major financial tool to enable access to goods or services that are beyond the monthly budget such as vehicles and furniture. It can also play a significant role in smoothing consumption and protecting against income shocks and financial stress. Individuals unable to access credit from mainstream financial institutions are often forced to use the informal financial sector or fringe market, such as payday lenders.”¹⁰⁸

Financial exclusion is also discriminatory, in that it tends to predominantly impact young people aged 18 to 24, students not in employment, people born in non-English speaking countries, and people earning between \$20,000 and \$25,000. Particularly in respect to young people who face financial exclusion, this study noted that the “lack of access to mainstream products makes this group vulnerable to predatory lending products and to the loss of uninsured assets.”¹⁰⁹

¹⁰⁶ *The Quarterly Journal of Economics*, Volume 84, Issue 3 (Aug 1970), 488 - 500

¹⁰⁷ Connolly C, “Measuring Financial Exclusion in Australia”, Centre for Social Impact (CSI) – University of New South Wales, 2013, for NAB, page 6

¹⁰⁸ *Ibid*, page 9

¹⁰⁹ *Ibid*, page 7

Attachment E: Background to the Principles of Reciprocity and Data Exchange

The Principles of Reciprocity and Data Exchange (PRDE) is the key document that outlines the six key agreed principles of exchange between credit providers and CRBs.

What are the six principles that underpin the PRDE? In summary:

- Principle One enshrines that signatories commit to the binding and enforceable system and structures developed by industry that encourage the safe and secure exchange of credit information in the PRDE.
- Principle Two ensures that the partial and comprehensive credit information is only exchanged between signatories to the PRDE.
- Principle Three ensures that data meets a certain standard before it is exchanged, by requiring that shared data adheres to the Australian Credit Reporting Data Standard (ACRDS). The standardised system means that data is communicated in a way that it can be universally understood by other signatories to the PRDE.
- Principle Four sets out a timeline for when signatories to the PRDE must transition their contribution of information into the PRDE. The timeline will ensure that there is a smooth transition to the PRDE.
- Principle Five outlines the dispute resolution and enforcement mechanisms of the PRDE system. The principle will ensure that there are comprehensive structures for compliance, monitoring, reporting and dispute resolution.
- Principle Six sets out the terms whereby the PRDE can be amended, and commits to a review of the PRDE three years after it commences.

The PRDE has been constructed to provide credit reporting system participants with trust and confidence through the imposition of behavioural expectations across three areas – reciprocity, consistency and enforceability. These are further explored below.

Reciprocity

While comprehensive credit reporting has significant benefits, these benefits are unlikely to be realised in a purely voluntary system (or a bilateral system). This was noted in the Interim Report for the Financial System Inquiry:

“The shift from negative to a positive credit reporting system has the potential to promote competition by enabling credit providers to more accurately assess the credit worthiness of borrowers, and to compete for customers by offering risk-based pricing.

However, [comprehensive credit reporting] is voluntary and the Inquiry understands that, to date, none of the major banks have participated. This is likely because the cost of sharing their information with competitors is greater than the benefit of gaining access to other competitors’ databases.”¹¹⁰

¹¹⁰ Financial System Inquiry – Interim Report, July 2014, 2-18

KPMG highlights that one impediment to the exchange of the new data is a ‘free rider’ concern (ie, a concern that other CPs will gain advantage from a CP’s disclosure of their credit information).¹¹¹ Unfortunately this concern was not addressed by the reforms to the Privacy Act so the PRDE seeks to deal with it by relying on the principle of reciprocity.¹¹²

Reciprocity has been broadly recognised as a necessary element for the successful implementation of credit reporting regimes around the world. For example, in 2011, the World Bank published its ‘General Principles of Credit Reporting’, which identified reciprocity as an element which is necessary to ensure that the credit reporting system is safe, efficient and reliable.¹¹³ The OECD has also noted that countries with private credit registries predominantly adopt and enforce codes of conduct which set out a set of agreed principles to achieve reciprocity.¹¹⁴ The OECD concluded in its 2012 Discussion Paper on Information Sharing that, where a private credit registry is utilised, reciprocity is the “key component” to this system.¹¹⁵

Reciprocity obligations are considered necessary because they provide the incentive participants need to provide information to the system. Without reciprocity, if a participant were to contribute any information voluntarily, there is no certainty that others would follow. As recognised by the World Bank in 2011:

“Large lenders may not be willing to share information in such a scenario [where there is no reciprocity for all areas] as they may consider that they will be contributing quality data and disclosing their good customers, while it is unlikely that this will be compensated with the data they will be able to obtain from the service providers.”¹¹⁶

Without reciprocity, all participants have an incentive to avoid sharing information; but at the same time all participants are negatively impacted by the fact that information is only available on a limited basis (ie, only available within networks and subject to their respective negotiations and bilateral agreements with the CRB responsible for that network).¹¹⁷

In contrast, the existence of reciprocity obligations as set out in the PRDE:

- create an “open access” regime to credit information, in that any CP may join the system and access information supplied by other signatory CPs (at the appropriate Tier level) from a number of CRBs;
- lowers barriers to entry and expansion for small CPs and small CRBs. Without reciprocity, smaller CPs may find it difficult to negotiate access to information on terms similar to those negotiated by larger CPs. Further, without the PRDE’s obligation to supply a consistent level of information to all CRBs with which a CP has a relationship, smaller CPs may face the higher costs of trying to establish multiple CRB relationships to obtain additional information. Therefore, they may receive less or incomplete information to make good lending and risk management decisions and compete with larger lenders.

¹¹¹ KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015), p 22.

¹¹² The concept of reciprocity refers to various obligations that require that participants in the credit reporting system share certain credit reporting information for the benefit of other participants. In the PRDE, reciprocity obligations are included in paragraphs 4, 8, 10, 14, 34, 35, 36, 38 and 39 and, by way of anti-avoidance, paragraphs 11, 12 and 44.

¹¹³ Task Force of World Bank, “*General Principles for Credit Reporting*”, (Report, World Bank, 2011), Foreword

¹¹⁴ OECD, “*Discussion Paper on Credit Information Sharing*”, (Discussion Paper, OECD, 2012), 14. In particular, the OECD observed that “The basic principles within codes of conduct generally cover reciprocity, data format, frequency and quality. Typically, signatory members are subject to the rule of reciprocity, meaning that if they wish to obtain information from the bureau’s database, they must also contribute their own credit data. Furthermore, the codes of conduct generally stipulate a common data format, a minimum reporting frequency and minimum data quality requirements. Violations of these principles tend to result in penalties which are also outlined in the code of conduct. In extreme cases, members may be subject to expulsion from the bureau.”

¹¹⁵ OECD, “*Discussion Paper on Credit Information Sharing*”, (Discussion Paper, OECD, 2012), 8

¹¹⁶ Task Force of World Bank, “*General Principles for Credit Reporting*”, (Report, World Bank, 2011), p19

¹¹⁷ That is, only available on the basis of commercial arrangements with a particular CRB which shares information in that CRB’s network with CPs that are members of the network (with no guarantee of the type or quality of data exchanged).

Similarly, smaller CRBs may find it difficult to reach the minimum scale needed to compete successfully in the market;

- creates incentives for CPs to provide more comprehensive credit information to the system in order to receive more extensive credit information;
- maximises participation so as to avoid excessive fragmentation in data supply. This in turn improves the overall availability of information in the system. Importantly, it does so without creating incentives for a monopolistic market structure – ie, there will likely continue to be more than one CRB in the market and they will continue to be able to compete with one another based on the quality, sophistication and price of the services they provide to CPs; and
- potentially lowers the cost of access to credit reporting information for some, particularly smaller, CPs, because CRBs will have broader access to information (and therefore less incomplete data) and smaller CPs are then less likely to have to enter into commercial arrangements with all CRBs (just for the purposes of access to data).¹¹⁸

Consistency

The concept of consistency refers to the obligations in the PRDE that require CPs to deal with all CRBs with which they have a services agreements on a consistent basis (ie, provide information at the same Tier level to all CRBs) across all credit portfolios.¹¹⁹

Consistency obligations complement the role of reciprocity obligations discussed above. In particular:

- the requirement that a CP that elects to deal with more than one CRB must deal with all of those CRBs at the same level of data exchange prevents a CRB from obtaining exclusivity in data supply or limiting supply to other CRBs – which would exacerbate the problems and negative consequences of certain CRBs having only incomplete and potentially unreliable credit information. At worst, such an outcome could create data monopolies where only one CRB had control over all data. This, in turn, would limit and lessen competition, be detrimental to other CRBs and CPs (especially smaller CPs that tend to have fewer CRB relationships and are able to negotiate less favourable terms than large CPs), and significantly reduce the benefits that may otherwise be derived from comprehensive credit reporting;
- CRBs that have a services agreement with the same CP will have access to the same data supply regardless of size or structure. This will allow CRBs to continue competing with each other for the establishment of relationships with CPs and the supply of credit reports to CPs (as opposed to the focus being on CRBs competing for access to credit information held by CPs).

The competitive tension between CRBs will be maintained as CRBs will continue to be able to compete and differentiate themselves in a number of ways including:

- the support provided to CPs to enable them to supply accurate and timely credit data into the system;
- the additional data sets they have available that may give a CP unique insights eg, geo-demographic data;
- analytical products which summarise, aggregate, compare, and/or assess individual consumers against their peers (eg, risk scores or scorecards), supporting decision making within a CP;

¹¹⁸ CPs can still enter into commercial arrangements with different CRBs depending on the services these CRBs offer; but there is less of a need to do so in order to deal with the information fragmentation problem discussed above.

¹¹⁹ The PRDE does not mandate that CPs maintain relationships with all CRBs, just that they must deal with all CRBs that they have a services agreement with on a consistent basis. As is the case today, CRBs will continue to compete for CP relationships.

- the functionality and methods through which CPs receive information from the CRB (eg, online enquiries, integration between CP and CRB systems); and
- consulting and other services which improve a CP's credit risk management capabilities.

KPMG has similarly noted that consistency will strengthen the incentives for CRBs to compete on the basis of the data analytics, resulting in better credit analytics across the CRB industry, with flow-on benefits to CPs and borrowers.

Given consistency, market dynamics that existed prior to the introduction of the PRDE (ie, once a CRB has established a relationship with a CP, that CRB would have access to all the credit information held by that CP) will continue to apply in the new comprehensive credit reporting environment.

CPs will continue to have the option to do business with as many CRBs as they choose, and CRBs will seek to differentiate their service offering from other CRBs. However, consistency obligations (including the need to apply the obligations across all portfolios) will simplify the nature of bilateral negotiations between CPs and CRBs. This has the potential for significant benefits and cost savings to be accrued to all participants (ie CPs and CRBs); consistency of data supply (including the need to apply the obligations across all portfolios) would also enable consumers to have confidence that their credit report contains "everything" that CPs have supplied into, or the CRB has received from, the credit reporting system. This would facilitate the ability and confidence of a consumer to engage with the credit reporting system, to develop a sense of ownership and control of their credit report.¹²⁰

Comprehensiveness of the data set also reduces the likelihood of a consumer avoiding full disclosure of their financial circumstances by dealing with multiple lenders.

As recognised by Edgar Dunn and the Centre of International Economics:

"... A 'pick and choose' arrangement for lenders (which is currently the case – eg. submit for credit cards but not for mortgages) creates substantial distortion in consumer credit files. This places lenders and borrowers at greater risk – since it makes detecting potential future defaults more difficult."¹²¹

Consistency obligations (including the need to apply the obligations across all portfolios) therefore result in a more transparent and efficient credit reporting system, strengthening the confidence of participants in the system to encourage participation and achievement of the benefits obtainable from comprehensive reporting.

Enforceability

The enforceability obligations comprise those provisions that set out procedures to address non-compliance. In particular, it includes the ability to limit the capacity in which a signatory may participate (as a last resort).

The enforceability enables the Independent Determination Group to recommend, and the Eminent Person Panel to make a binding decision, to limit the capacity of a CP or CRB to exchange of CCLI and RHI for non-compliance. There is a graduated scale of compliance outcomes before this limitation would be applied. This option also ensures that any problematic / non-compliant data would be quarantined and not impact the overall quality and reliability of the PRDE data. Without genuine consequences and sanctions that would affect a signatory's participation, non-compliance

¹²⁰ Centre for European Policy Studies, European Credit Research Institute, Steinbauer & Pyykkö, "Towards Better Use of Credit Reporting in Europe", CEPS-ECRI Task Force Report, September 2013, page 15

¹²¹ Centre for International Economics, Edgar, Dunn and Company, 'Options for implementation of comprehensive credit reporting in Australia' (Report, Centre for International Economics, 2006), 56

may not be viewed seriously and the PRDE would not provide other signatories with assurance of high levels of compliance, particularly in relation to the necessary elements of reciprocity and consistency discussed above.

As noted by KPMG, the ability to enforce the PRDE will instil confidence in the workability of the PRDE as a data exchange framework, and that confidence in turn will encourage wider participation with the PRDE.¹²² Without enforceability, the safeguards and assurances intended, and provided for, by the PRDE would have limited value.

¹²² KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015), p 31.

Attachment F: Research supporting credit reporting data exchange

ARCA has collated a range of external reports and articles to support our submissions on the following matters:

- CCR as a driver of competition in consumer credit;
- The inclusion of government data into the credit reporting system;
- The inclusion of balance and/or utilisation data; and
- Non-financial credit providers submitting and gaining access to repayment history data.

We commend the following to the Productivity Commission:

Impacts of CCR on Competition

KPMG produced a major report on the impact of CCR and PRDE on the consumer lending market (KPMG, *The benefits of enhanced credit data exchange*, (KPMG International, January 2015)), available here:

<http://registers.accc.gov.au/content/index.phtml/itemId/1184971/fromItemId/278039/display/application>

CRA has a further report (*Incentives for Sharing Positive Data in Bilateral and Multilateral Settings*) available here:

https://www.google.com.au/url?sa=t&rct=j&q=&esrc=s&source=web&cd=2&ved=0ahUKewiju_HKzeDNAhXJWj4KHdUuAUgQFggiMAE&url=http%3A%2F%2Fregisters.accc.gov.au%2Fcontent%2FtrimFile.phtml%3FtrimFileTitle%3DD15%2B77976.pdf%26trimFileFromVersionId%3D1191221%26trimFileName%3DD15%2B77976.pdf&usg=AFQjCNF7RDRc7ONfLd_VG_pM1cSwEc7e4g&cad=rja

The inclusion of government data into the credit reporting system

US Department of Health and Human Services publication that includes that child support payment defaults in the US are reflected in credit reports:

<http://idaresources.acf.hhs.gov/page?pageid=a04700000Df6Ag>

[Article originally printed in *The Australian Financial Review* that reported ATO second commissioner Geoff Lepper suggesting that introducing tax debts on credit reports may encourage people to pay their tax obligations:](http://www.lockwood.com.au/ato-wants-name-debtors/)

<http://www.lockwood.com.au/ato-wants-name-debtors/>

The inclusion of balance and/or utilisation data

FICO is generally recognised as the 'universal' consumer score – it combines the 3 scores from the major US credit reporting bodies (Equifax, Experian and TransUrban). They utilise a range of factors in determining your score. Credit utilisation accounts for approximately 30% of the weighting for a FICO score in the United States: <http://www.myfico.com/CreditEducation/Amounts-Owed.aspx>

A publication from the US Department of Health and Human Services that explains how the US credit reporting system usually calculates a credit score. It generally indicates a heavy reliance on credit balance/utilisation information to calculate the score:

<http://www.idaresources.acf.hhs.gov/page?pageid=a04700000B7oys>

Publication by Federal Reserve Bank of Philadelphia, pg 2 explains how credit utilisation is used:

http://www.philadelphiafed.org/bank-resources/publications/consumer-compliance-outlook/2010/third-quarter/cco_q3_10.pdf

Non-financial credit providers submitting and gaining access to repayment history data
PERC report explaining how NICOR and DTE Energy benefitted from having their defaults show up on a person's credit report, although it doesn't strictly say that utilities gain access to credit reports:

http://www.perc.net/wp-content/uploads/2013/09/bizcase_0.pdf

PERC report that specifically explores the effect of adding alternative data (ie, from utilities and telecommunication companies) to credit reports:

<http://www.perc.net/wp-content/uploads/2013/09/WEB-file-ADI5-layout1.pdf>