

Response to Productivity Commission Draft Recommendations

Key concerns of Veda

Matthew Strassberg
General Manager, External Relations AU/NZ
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Draft recommendation 4.1 (credit reporting)

Veda welcomes the Productivity Commission's establishment of a benchmark target (40%) for supply of comprehensive credit reporting (CCR) information by major lenders. The Commission recommends "if this target is not achieved by 30 June 2017, the Government should circulate draft legislation to impose mandatory reporting by 31 December 2017".

Veda can advise the level of supply anticipated by the end of 2016 is lagging, in large part as a result of continued uncertainty over the issue of how repayment history information (RHI) should be reported for consumers during certain payment arrangements ("indulgences"). Whilst there is a level of momentum for moving to CCR reporting, this issue is causing delay and must be resolved with urgency. This lack of resolution may change with an approach by industry association ARCA to the Information Commissioner for guidance on how Part IIIA of the Privacy Act should be interpreted and applied. However, concern remains that an unsatisfactory outcome will create another perceived barrier to CCR supply.

In contrast we note that New Zealand has incorporated hardship flags into their credit reporting fields; New Zealand's largest telco is now supplying CCR; industry CCR contribution has risen past 51 per cent; and overall Veda anticipates a doubling of the number of consumer records that hold CCR information by mid-2018. New Zealand is seeing the benefits from CCR, with little issue.

Australia's ongoing sluggish participation needs intervention:

- Veda supports the Productivity Commission's benchmark of 40 per cent CCR contribution.
- To achieve this we **recommend** that Productivity Commission expand upon recommendation 4.1 to include support for the creation of a Treasury led forum to establish an indicative timetable, as per the Productivity Commission, for the supply of CCR by leading credit providers.
- This should require quarterly updates on progress.
- Should Treasury not be satisfied with progress at reaching the benchmark, then, as per the Productivity Commission recommendation, mandatory supply must be considered.

Veda does not believe mandatory contribution ordered by Government in a reform that passed with clear industry support to be an optimal solution; we also remain concerned that such intervention will add further delay and bring greater complexity and potential cost. However, without some accountability and the possibility of sanction, the pace of CCR contribution will remain unacceptably slow.

In addition, Veda calls for a new **recommendation** from the Productivity Commission, calling for the introduction of a formal review process for the 2012 credit reporting provisions. The lack of such a review mechanism is hampering resolution of issues or consideration for improvements and could make recommendations to Government on:

- RHI and changed payment arrangements;
- Hardship flags
- Operational inconsistencies and challenges arising from the implementation of the 2012 Act and:
- Consideration of additional data elements and additional users.

Both of the above recommendations are entirely consistent with the findings of the Financial Systems Inquiry that:

In 2017, Government should review industry's participation in CCR to determine whether a regulatory incentive or legislation for mandatory reporting is required. Government could also consider expanding CCR to include more data fields.¹

Draft recommendation 6.2 & Appendix E (data sharing & bank transaction data)

Enabling consumer's to access their transaction data and disclose it to another party were key considerations in Appendix E of the Productivity Commission report and featured in the hearings and final report by the *Senate Standing Committees on Economics Inquiry into competition within the Australian banking sector*.

We also note the Treasurer's public statements referring to need for an appropriate regulatory framework for open aggregated financial data standards:

"There is ambiguity around legitimacy and the standards by which they currently access customer financial data, especially where a user's banking credentials are required.

"There is a need to reform the code and implement a strict standard to protect Australian customers while allowing them the benefit of technology innovations"

Obtaining and considering a consumer's bank transaction data is a requirement for Short Amount Credit Contracts legislation (SACC or payday loans). This requirement is to be extended and made more explicit under a Government proposal to introduce a requirement that SACC loans only be extended where total loan repayments do not take up more than 10 per cent of an applicant's income.

Additionally, bank transaction data is directly linked to meting obligations in *Regulatory Guide 209: Credit licensing: Responsible Lending Conduct* to inquire and verify credit applicant's income and expenses.

Recent ASIC enforcement actions have shown the importance the regulator places on obtaining bank transaction data² and verifying income & expenses³

¹ Pg 190, Financial System Inquiry Final Report November 2014

We note that accessing transaction history not only accesses data to confirm affordability, but also reveals consumer's behavioural information. In regard to a regulatory framework, we note ASIC acknowledges the uncertainty about the applicability of the Epayments Code and that *"ASIC has not yet formed a view about how the uncertainty regarding liability can or should be resolved"*⁴

As highlighted by the Treasurer, the status of access to, and use of, consumer's bank transaction data needs regulatory certainty. We believe an additional **recommendation** from the Productivity Commission is needed to reflect the uncertainty about bank transaction data and its relationship with, the Epayments Code; Regulatory Guide 209; part IIIA of the Privacy and sections of the National Consumer Credit Protection Act relating to SACC loans.

Draft recommendation 9.1 & 9.2 (consumer rights)

Veda has concerns about aspects of the Productivity Commission's proposal for a new consumer right. The definition proposed is extremely broad and would capture data derived from online activity. The proposal goes on to suggest an exemption for data that is "transformed to a significant extent" but there is also a new right proposed allowing consumers to "appeal automated decisions".

Beyond Australian Privacy Principles 12 and 13, (access and correction rights), the Productivity Commission would now be creating much broader obligations that move beyond the accuracy of specific data elements held about an individual to a right to contest the mass-scale algorithms - and the intellectual property behind it - that are subsequently applied to information and then disclosed to third-parties.

Further work is needed to understand these issues and how concerns can be addressed and, as currently detailed, Veda is **opposed** to 9.1 and 9.2.

Other concerns

Veda is on the Board of Data Governance Australia and shares many of their concerns, particularly in relation to the definition of National Interest Datasets; Government Contracts and the potential overlap of multiple regulators cited in the Productivity Commission draft report.

² <http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2014-releases/14-313mr-payday-lender-penalised-for-breaching-new-responsible-lending-laws/>

³ <http://www.asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-417mr-asic-action-sees-bmw-finance-pay-77-million-in-australias-largest-consumer-credit-remediation-program/>

⁴ Pg 17 ASIC submission to Productivity Commission Inquiry into data availability and use