



15 June 2018

Mr Colin Minihan
Principal Legal Officer, Information Law - Civil Law Unit
Attorney-General's Department
National Circuit
BARTON ACT 2600
By email privacy.consultation@ag.gov.au

Dear Mr Minihan

Consumer Credit Reporting and Hardship

Introduction

The Australian Banking Association develops public policy analysis and advocacy on behalf of the banking sector. The ABA works with government, regulators and other stakeholders to improve public awareness and understanding of the industry's contribution to the economy and to ensure Australia's banking customers continue to benefit from a stable, competitive and accessible banking industry. The ABA supports initiatives that promote competition in the sector and empower consumers to use their data from across the economy to make the best choices for their circumstances and preferences.

The focus of this submission is about Comprehensive Credit Reporting (CCR) and its benefits and how the system can be improved to better achieve these objectives. The submission explains industry's support for use of a hardship flag, or similar, to depict a situation where a customer might be in difficulty and is in an arrangement with their bank.

Comprehensive Credit Reporting

CCR is an important regulatory innovation which will provide long term benefits for both customers and credit providers (CPs). Bank customers, and other consumers, will benefit because the CCR regime provides a system for lenders to access a deeper, richer set of data. This means credit providers can better assess a borrower's true credit position and therefore better match a borrower's need for credit with responsible access to credit. The CCR system means that through the shared information of the five data sets of CCR, including repayment history information (RHI) to which other licensed CPs have access, there will be a better view about the credit worthiness of an individual. This plays an important part in helping to protect the individual from taking on too much credit and helps banks and other CPs to make better lending decisions.

It is also a positive change for consumers because at the moment with "negative" data, if a customer has a good payment credit history, the only person who knows about that is their bank. CCR puts consumers in a stronger negotiating position to access products and services and the credit they want.

Attorney General's Hardship Review

The Attorney-General's review of CCR and hardship is a valuable initiative in the context of the Government's Bill to mandate CCR by the major banks. The Discussion Paper provides some valuable background information about the development of the CCR system and its relationship with customers who experience financial difficulty in managing their credit facilities often due to unemployment, illness or family breakdown.

More generally, the CCR system is a positive development for customers in providing rich information about their credit facilities or when they apply for credit. It is also a positive development for small



business customers in relation to applications for commercial credit when a credit provider may use the small business principal's consumer credit report to aid its decision making. The CCR system will help to ensure there is responsible and appropriate access to business credit.

These benefits are important outcomes for the Australian economy given the number of small businesses operating in Australia and the level of household debt.

1. CCR and financial hardship

1.1 Reporting RHI

One major challenge regarding implementation of CCR is that the mandate does not deal with an unresolved, important matter central to the trust and accuracy in the CCR system which needs to be addressed. If not settled, it will undermine the key objectives of the regime. This concerns a customer who falls into arrears, or thinks they will, under their credit facility, has discussed their financial situation with their bank and the bank has agreed to provide relief but has not yet agreed to vary the terms of the contract until that person's financial situation recovers.

Under the National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018 (Bill) banks will not have the option to withhold the fact that customers have not met repayments in accordance with their credit contract.

Where a customer has accepted a change to their credit contract in accordance with section 72 of the National Credit Code (NCC) the bank will be required to report what is 'due and payable' under the terms of the changed contract.

Other credit providers will not see that anything has changed from the original credit contract which was first reported under CCR. Without information to explain the actual position, the opportunity of reducing the information asymmetry affecting other CPs which may be considering an application for credit by the individual will have been lost.

This CP must rely upon this disclosure by the individual.

With the reporting of RHI, the Privacy Act does not permit the bank to report that a customer is experiencing financial hardship. The bank can only report whether the payment due and payable has been made. A customer could be paying nothing or significantly less than the original amount payable and the system will not allow a lender to explain why the customer is just not making payments. The lender might simply decline an application due to the applicant's previous poor performance. In summary, this means credit providers accessing the CCR system won't see the customer is in difficulty and is working with their bank - a positive situation - if the payment is reported as missed.

Equally, if a payment is recorded as paid but which is less than the contractual amount, other credit providers may conclude the individual is not in financial difficulty and is credit worthy which may be far from the case and could offer further credit to the individual which if accepted would add to their already unsustainable debt.

In summary, we need a system which provides for up-to-date, complete and accurate reporting, as required by the Privacy Act, where critical contextual information is available explaining that customer's situation in context.

Licensed CPs will be required to report RHI in accordance with section 6V of the Act, Regulation 12 of the Privacy Regulation, and paragraph 8 of the CR Code.

ABA's members have developed their policies which take into account the provisions of the National Credit Code (NCC), Part IIIA and the Australian Privacy Principles of the Privacy Act together with the Privacy Regulations, the CR Code and prudential guidance by APRA.

These policies support the principles of responsible lending and customer benefit and protection.



1.2 Banks' hardship programs and reporting of RHI

Over a decade banks have been commended generally on their assistance provided to their customers who experience financial hardship in the management of their credit facilities. A key feature for the success of and the regard for these programs is their flexibility to accommodate the variety of customer situations which occur in these difficult circumstances.

To ensure transparency and confidence in reliance on the CCR system, there needs to be information disclosed which alerts CPs that there has been a change in the customer's performance of the credit contract. There also needs to be an explanation as to why to demonstrate the change has arisen due to financial hardship. In effect, this indicates that there are more factors to be considered than can be communicated through RHI alone.

Further this is consistent with the Privacy Act's requirements for the disclosure and use of personal information including under Part IIIA of the Act to be accurate, complete, up to date and relevant.

A modification for, the reporting of RHI which has been operating in comparable overseas countries such as New Zealand, Canada and the UK is discussed below.

1.3 Developing a solution

The Australian Retail Credit Association (ARCA) has been working with banks on a possible model of how RHI could be reported. ARCA shares a common membership with the ABA.

The ABA contends a solution in the form of a hardship "flag" or indicator of an individual experiencing financial hardship in the performance and management of their consumer credit facility or facilities.

In principle, the ABA supports the notion of reporting information in the CCR system which indicates that a particular customer is experiencing financial difficulty with their credit facility.

The ABA supports the Attorney-General's review to recommend that in cases of financial hardship, the privacy regime should permit the reporting of RHI with an accompanying explanation about the customer's situation. If so, the ABA is keen to participate in a process to achieve the disclosure of this important information in order to complete the intended role for the CCR system. The design and application of this indicative information will require detailed examination and consultation.

In New Zealand, a form of reporting hardship is permitted with an explanation accompanying RHI.

In the UK details of a repayment arrangement may be reported. In Canada, the existence of a payment plan is disclosed.

The experience in these countries has been positive in the sense that there is a broad understanding of the credit reporting system and its implications. Detailed information has been made available for consumers about the relevant CCR systems in these countries and how to manage their credit facilities.

1.4 Consumer advocates' concerns

The review is expected to examine the relative positions of stakeholders. Consumer advocates have expressed views concerning the detriment which consumers may experience in the event reporting of RHI affects their ability to access consumer credit. The ABA understands these concerns.

The CCR system provides more than RHI to enable CP's to make appropriate lending decisions to avoid disadvantaging customers. There are also responsible lending obligations which CPs must observe. The ABA believes there would be greater benefit and protection for consumers if CPs are able to better understand a customer's circumstances and why payments may not have been made.

On the more positive side, there is the opportunity for consumer advocates to provide information to consumers about CCR and the importance of making contact with their credit provider as the entity that can help provide a resolution. Banks have robust and well regarded financial hardship arrangements for their customers experiencing financial hardship. The ABA and banks send positive messages to the banking customer community about the availability of hardship relief and through the Code of Banking Practice.



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RHI reporting which includes more information about financial difficulties and that the customer is working with their CP is a positive message and beneficial particularly for the more vulnerable consumers, especially after their financial position has recovered.

Properly explained, these consumers would understand the protection for them which the additional information would bring. Otherwise, they could obtain further inappropriate credit which would only further exacerbate their difficult financial situation if they were tempted to do this.

Further, this additional information would help to distinguish those customers who have worked with their bank to deal with their situation from those who have missed payments without explanation.

In conclusion, the ABA would welcome the opportunity to discuss this submission with you and your colleagues at your convenience.

Yours sincerely

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