



**Submission to Attorney General's Department**  
***Review of financial hardship arrangements***  
**22 June 2018**

**SUMMARY**

Equifax is the trusted custodian of 16.5 million Australian consumer credit reports, regulated by Part IIIA of the Privacy Act. That Act explicitly states that the purpose of information held by credit reporting bodies is to provide credit providers with *"information about the credit worthiness of an individual"*; furthermore, the information held must not be *"inaccurate, out-of-date, incomplete, irrelevant or misleading"*.

Australian credit providers must hold an Australian Credit Licence, a condition of which is complying with responsible lending conduct obligations. At the heart of responsible lending is a requirement that credit must not be extended where the repayments would cause a consumer substantial hardship.

The information on a credit report helps overcome the information asymmetry inherent when consumers apply for credit. Changes made in 2012 expanded the data elements that can be collected on a credit report, including repayment history information. Repayment history information shows if a consumer has made, on time, the required payment on an active credit account. This gives lenders an insight into how well a person seeking more credit is performing with their current credit commitments.

For a consumer, repayment history information can protect them from over-indebtedness or alternatively, empower them to show they have moved on from a period of financial difficulty.

The question now being asked is to how to report repayment history where a consumer, who is experiencing financial difficulty, has approached their credit provider.

We support a system that is simple for consumers to understand:

- Add two new flags as an adjunct to repayment history information that provides context to the changing circumstances of a consumer in financial difficulty.
- The two flags should be retained consistent with existing data retention requirements for repayment history information.
- Data reported should not be retrospectively changed; to do so creates confusion and complexity.
- Concerns that these flags could trigger reductions to other credit limits should be addressed as part of the existing processes credit providers use when a consumer has advised their credit provider of financial hardship.



## What is the issue?

The issue this review is examining is what arrangements should be put in place for reporting to credit reporting bodies repayment history information where the consumer has advised their credit provider they are in financial difficulty.

As noted in the Discussion Paper, there is some concern that the wide range of approaches credit providers adopt in response to consumers in hardship are not reflected in the credit reporting system.

Equifax accepts that where a credit provider has agreed to a hardship notice, then they should vary the contract and report repayment performance in line with the varied contract. For example, where the credit provider has agreed to a repayment of \$500 per month on a \$400,000 mortgage instead of the originally contracted \$3000.

However, without further information being readily available, if the consumer is up to date with the new arrangement, a potential new lender will not be made aware of the varied contract, potentially concluding that up to date repayment history information on the \$400,000 mortgage means the consumer is capable of handling further credit – worsening the consumer's circumstances with credit they cannot afford.

In another scenario, credit providers may choose to work with the consumer to resolve their hardship issue without a variation to the contract. In this situation, it is likely that the consumer's repayment history information will continue to age in line with the original contract, namely it would reflect a missed repayment.

Without further information being available an incoming lender would not be aware that the consumer is working with their bank on what may only be a temporary issue causing missed repayments.

## Two flags to help consumers and lenders

We support a system that is simple for consumers to understand and ensures repayment history does not mislead a credit provider. Two new flags should be added as a component of repayment history information.

### 1. Arrangement Flag

An arrangement flag indicates a consumer who has advised they are in experiencing difficulties, and are being assisted by their credit provider but a formal variation to the contract has not been granted. Typically this flag would appear where a consumer is in a situation of *temporary* difficulty but there is reasonable expectation they will be able to resume the originally committed repayment.

For example:

*Mr Smith has just lost his job and is in financial difficulty. While he has a second-round interview for a new job in two weeks, Mr Smith nevertheless contacts his credit provider to advise them of his changed financial situation.*

*Because neither Mr Smith nor the credit provider know if he will be successful at the job interview in two weeks, the credit provider will not be able to vary the contract with confidence that Mr Smith will be able to meet the new obligations. Instead, the credit provider gives Mr Smith a period of two months with no repayments, until he's back on track, at which point the usual repayments will begin again. The credit provider makes it clear his repayments are still due and payable but they are not enforcing the obligation.*

*The credit provider reports Mr Smith's RHI as one month in arrears, but as they are working with him on this issue they also report the Arrangement Flag with that month's RHI.*

While missed repayment history will be recorded, the presence of this flag indicates that the situation is only temporary, as evidenced by the consumer subsequently making repayments on time, demonstrating emergence from temporary difficulty. This is the very point of repayment history information, it's ability to show how well a consumer is managing their credit commitments at the time of application, giving consumers an ability to demonstrate they are once again "back on track" and recovering from a period of missed repayments brought on by temporary circumstances.

Additionally, the willingness of a consumer to approach their bank and seek an Arrangement Flag is indicative of positive consumer behaviour. As such, this flag encourages consumers to engage with credit providers if they are in financial difficulty.

## **2. Variation Flag**

In circumstances where consumers are in a more sustained period of financial difficulty, a different flag should indicate if the contract has been varied in response to a National Credit Act s72 hardship notice.

This flag would complement repayment history information, meaning it would sit beside RHI to indicate that there has been a variation to the agreed payment. The RHI itself would reflect if the consumer is making the agreed varied payment amount on time.

For example:



*Ms Jones is in financial difficulty because she has just lost her job. After a difficult couple of weeks, Ms Jones has, however, secured a new role – but with a salary \$30,000 less than her previous role.*

*Ms Jones knows that she needs to readjust her lifestyle to fit within her new salary. She contacts her credit provider and advises them of her situation consistent with a hardship notice; they accept her situation as hardship and agree to vary her contract, lowering her monthly repayments and extending the length of the contract.*

*The credit provider for the next RHI contribution notes Ms Jones has continued to meet the monthly obligation, but as the contract has been varied under a hardship variation they also report the Variation Flag with that month's RHI.*

## **Retain consumer and lender confidence**

Credit reporting information should be a record of fact about a consumer's credit worthiness, and for quality and consumer/credit provider ease data should not be retrospectively changed. As such any indicators added to the credit reporting data exchange should be retained in accordance with existing data retention requirements. In effect the proposed flags would then be retained for 24 months as per currently occurs with RHI<sup>1</sup>.

Additional assurance should be given to ensure consumers can have confidence in approaching their credit provider - specifically concerns that these flags could trigger reductions to other credit limits. This issue should be addressed separately, as part of the mandatory processes credit providers use when a consumer has advised their credit provider they are in financial hardship.

Equifax notes our thanks again for the opportunity to contribute to this review. Equifax supports addressing this issue as expeditiously as possible to enable certainty for industry participants and consumers. We understand that this review may recommend law reform to further address how financial hardship is represented in the credit reporting system, and we would appreciate the opportunity to participate in further discussions in relation to any proposed reform.

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<sup>1</sup> Under section 20W of the Privacy Act