



22nd June 2018

Attorney-General's Department

By email: privacy.consultation@ag.gov.au

Dear Sir/Madam,

Review of Financial Hardship Arrangements

As a major Credit Reporting Body (CRB) in the Australian credit landscape, illion (formerly Dun & Bradstreet Australia and New Zealand) welcomes the opportunity to provide this submission to the Attorney-General's Department, regarding its Review into Financial Hardship Arrangements (the Review).

Hardship arrangements represent an essential consumer protection measure; consumers must have the ability to request a loan variation should they fall into a period of financial difficulty. Equally, there is a strong public interest in flagging such arrangements within a consumer credit report, as lenders will have awareness of information that is vital to accurate credit assessment, while borrowers will be protected from taking on additional credit during periods of financial difficulty. illion therefore supports the introduction of a mechanism through which a customer's financial hardship status may be flagged by CRBs and credit providers. We note that the views expressed in our attached submission align with those of the Australian Retail Credit Association (ARCA), of which illion is a member.

By way of background, illion has been a strong advocate for mandatory comprehensive credit reporting (CCR), allowing credit providers to make more informed credit decisions and enhancing their ability to fulfil their responsible lending obligations. By giving full effect to CCR, the legislation currently before the parliament will also create an environment that encourages competition and innovation in the financial services sector. Importantly, a more competitive credit environment will benefit Australian consumers more broadly, by offering pricing benefits and the capacity to demonstrate a recovery from a negative credit experience sooner than what is possible under the current 'negative only' data regime.

If there are any questions or concerns arising from the attached submission, please feel free to contact me at any time at steven.brown@illion.com.au.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Steve Brown", written over a light blue horizontal line.

Steve Brown

Director- Bureau Engagement

Submission by illion

Review of Financial Hardship Arrangements

About illion

illion is a data and analytics business, operating in Australia since 1887. Using extensive credit and commercial databases, we assist banks, other financial services providers and other businesses to make informed credit and risk management decisions, and help consumers access their personal credit information.

Illion's consumer credit bureau is a core component of our business. Through this service, we provide financial institutions and other clients with access to a range of reports, which assist in understanding the risks associated with current or prospective customers.

In 2014, illion became the first credit reporting bureau in Australia to implement and offer CCR data to the domestic market. We look forward to progressing our work under the proposed mandatory scheme, assisting customers via credit risk assessment, to produce flow-on benefits to competition in the wider economy.

Question 1: Is there sufficient certainty in how the forms of hardship arrangements discussed in this paper are currently treated in relation to consumer credit reporting? If not, what are the imbalances that are evident in the current system? That is, what are the reasons for change and why should hardship arrangements be included in the credit reporting system?

illion is of the view that financial hardship arrangements are not adequately treated under the credit reporting framework at present. Currently, if a debtor raises a repayment issue with their credit provider, the parties may agree to vary the contract on grounds of financial hardship (either for a temporary period of time or under a permanent arrangement). However, because there is no requirement under the *Privacy Act 1988* (Cth) (the *Privacy Act*) to include this information on a customer's credit report, whether an individual is subject to a hardship arrangement is not currently visible. The current absence of this information is effectively misleading lenders to perceive a potential borrower in a hardship arrangement as one with no issues.

Therefore, illion strongly supports the introduction of a new category of credit reporting information under the *Privacy Act*, which would allow a hardship 'flag' to be included on an individual's credit report if they have entered hardship arrangements with a credit provider. The key benefit this will provide to both customers and lenders is enhanced transparency and a real time assessment of the borrower's current financial and personal circumstances. Inclusion of hardship will enhance the ability of lenders to fulfil their responsible lending obligations and assist in avoiding inappropriate consumer lending that has recently been highlighted through the hearings of the Banking and Financial Services Royal Commission.

Currently, under the *Privacy Act*,¹ customer repayments are only recorded in the context of whether or not an individual has met their monthly payment obligation in relation to consumer credit. With the addition of a hardship flag, a prospective lender will be able to distinguish whether or not an

¹ S. 6V(1).

individual has varied their contract to reduce a repayment amount. This will provide an accurate understanding of the customer's performance, and greater clarity on their borrowing capacity. By making clear whether a customer has formally altered a contract due to hardship, lenders will have more insight into whether or not the customer should responsibly be offered additional credit. As a consequence, a hardship flag will assist individuals in properly managing debt levels and prevent customers from taking on unmanageable additional credit. Typically, periods of hardship will lead to financial stress and push consumers towards less scrupulous or potentially predatory lenders which frequently offer short-term, high-interest products – only further harming the customer. The introduction of a hardship flag will help to ensure that fewer people find themselves in this undesirable and difficult position.

Question 2: If the current mechanisms for how hardship arrangements (formal or informal) are reported are not effective to facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected, how should this be addressed? Are there reforms that could be implemented within the current regulatory framework? Are there non-legislative options available?

Illion suggests that legislative reform is required to include hardship information in Australia's credit reporting system. As discussed above, we envisage this information will facilitate greater clarity for both credit providers and borrowers. To this end, Illion suggests that a new category of credit reporting information is introduced under section 6N of the *Privacy Act*, a proposal which we understand has the support of ARCA.

Question 3: Some of the matters to be considered in determining regulatory/non-legislative options for action include:

- a. **What hardship information should be covered, and why? How should informal arrangements/indulgences be addressed?**

Illion is of the view that hardship information should be included on an individual's credit report. We envisage two categories under this hardship flag, which we understand has the support of ARCA:

1. Firstly, *hardship variation information* should be included in a credit report in the instance a customer's repayment obligations under their contract are formally varied for reasons of hardship.

We suggest this flag covers both variation agreements made pursuant to hardship provisions in the *National Consumer Credit Protection Act 2009* (Cth) (*NCCP Act*),² and more generally, to other contract variations agreed to on grounds of financial difficulty. This broad application will permit credit providers to record variations agreed to outside of the relevant timeframe restrictions in the *NCCP Act*, allowing greater flexibility and further transparency. Additionally, by including hardship information in the *Privacy Act*, this form of credit information will remain independent to any future amendments made to the hardship provisions of the *NCCP Act*, or the wider hardship framework.

² Sch. 1, s. 72.

illion trusts that the inclusion of hardship variation information on a consumer's credit report will also support credit providers in terms of their obligation to assist customers experiencing financial difficulty, under the Australian Banking Association (ABA) *Code of Banking Practice*³ and the Customer Owned Banking (COB) *Code of Practice*.⁴

We propose that this category includes the relevant date of when a contract or repayment obligation is agreed to.

2. Secondly, *assistance information* should be included in a credit report in the instance a credit provider agrees to temporarily delay a customer's scheduled repayments, without formally varying their contract.

illion proposes that assistance information be included in a customer's credit report in order to provide context for negative repayment history information (RHI) accrued after a credit provider agrees to temporarily delay or reduce repayments. This change would provide clarity to other credit providers that a customer is actively engaged with their provider, despite being unable to meet a repayment obligation.

We suggest this information is recorded each month during which a credit provider has offered to delay or reduce a customer's repayment.

Further, we believe that a hardship flag should not be mandatory; lenders should not be obliged by law to record this data about a customer.

- b. Should information about the reasons for hardship (such as loss of employment or ill health) be included? If so, how will this information be used and would this mean different consequences for individuals depending on the reason for hardship? If credit decisions are to consider the reasons for hardship, why can't this information be obtained directly from the individual (or, with their consent, from the relevant credit provider)?**

We do not support the inclusion of information regarding the reasons for a hardship arrangement (such as loss of employment or ill health), on a customer's credit report. The privacy implications of this change are self-evident, and we do not see significant added value in making this information known to a prospective lender from a credit assessment perspective. Should the information be required in a particular circumstance by a lender, we anticipate that it could be obtained from the potential borrower directly, rather than from a credit report.

- c. Should hardship information be a separate type of credit information which is separately reported and subject to specific rules, or should it be reported incidentally, as part of RHI? What is the appropriate relationship between hardship information and RHI?**

illion believes that hardship information should be recorded in a customer's credit report separately to RHI. Hardship information is directly relevant to RHI, given that RHI is concerned with a customer's repayment obligations, which may not be met should the customer experience a period of financial hardship. A hardship flag can therefore provide context to a credit provider regarding any negative RHI information recorded throughout this period.

³ Cl. 28.

⁴ Cl. 24.2.

d. How will the hardship information be used and should there be any restrictions on the use of this information? Who should be able to access hardship information and in what circumstances?

All information collected as part of a hardship flag would be used by credit providers in line with existing responsible lending obligations and credit reporting obligations under the *Privacy Act* and the *NCCP Act*. Those able to access hardship information should be limited to credit providers eligible to receive CCR data under the current credit reporting framework.

e. What are the expected consequences for individuals about whom hardship information is reported? How might any risks arising from these consequences be mitigated?

As noted above, consumers will benefit from the added transparency offered via a hardship flag, as they will be better protected from accessing additional credit, potentially in a period of high stress, on terms or from sources they would not normally contemplate. Additionally, we do not anticipate any privacy law issues, as a hardship flag would simply form another set of data subject to the existing privacy framework and responsible lending obligations.

In a similar way that a file ban does not automatically mean that a credit application will not be considered by a credit provider, we anticipate that the credit provider receiving a hardship flag in a credit report would be on notice to make further enquiries about the nature of the hardship arrangement before granting or declining credit.

It has been argued that a formal hardship flag may dissuade customers from voluntarily approaching their lender during a period of financial hardship. However, we suggest that individuals in genuine or prolonged periods of adversity will realistically appreciate that open communication with their lender is essential when experiencing financial hardship, in order to properly manage debt. We also anticipate that lenders would communicate the effects of raising hardship in a consistent and clear manner to customers.

f. Should there be other limitations or restrictions on the hardship information that is included in the credit reporting system? For example, should retention of the hardship information be limited (eg no retention once hardship period over)?

Illion proposes that hardship information is represented on a consumer's credit report for a period of 24 months, aligned with the current retention period for RHI. This period is relevant to hardship information, as the use of a hardship flag will provide context for any negative RHI information recorded.

g. How is the inclusion of hardship information expected to operate in practice? For example, noting that most credit application processes are automated, what are the expected consequences of including hardship information in this context, and how are practices in industry around these matters to be made consistent so that consumers are not dis/advantaged depending on the credit provider?

In practice, a robust hardship flag should operate in a formal and consistent manner to function properly within automated credit application processes. Both the credit provider and consumer

should be clear on the use of a hardship flag when appropriate, reflected by appropriate notation on the customer's credit report.

Should hardship information be added as a category of data under section 6N of the *Privacy Act*, CRBs and credit providers will be required to update their credit reporting systems to implement this new form of reporting. Further, lenders will be required to review their internal practices to ensure staff can clearly identify incidents where hardship information should be recorded, and how this is communicated to customers.

Question 4: If financial hardship was included in consumer credit reporting, how would this impact credit providers' engagement with their responsible lending obligations:

- a. Where a credit provider is assessing a new application for credit where a consumer's credit report represents that the consumer has recently entered into a hardship agreement.**

While illion is a credit reporting agency and not a credit provider, we believe the provision of hardship information will significantly enhance a credit provider's ability to comply with their responsible lending obligations, by providing greater awareness of a potential borrower's individual circumstances.

When assessing a new application for credit, illion expects that credit providers will take a hardship flag into consideration, and could make additional inquiries to better understand reasons for the flag, before making an offer of credit.

- b. Where a credit provider has extended credit to a consumer (whether ongoing, or a single loan), and the consumer enters into a hardship agreement with another credit provider which is then reported on that consumer's credit report**

illion expects that credit providers will take any changed customer circumstances into account when making credit management decisions. In doing so, providers will be able to better assess whether customers do not have the capacity to take on additional credit from their own institution, if a customer has flagged hardship with a competitor. This information will assist the lender in complying with responsible lending obligations via the added transparency it provides.

Question 5: Are there any other issues involving hardship and the credit reporting scheme that should be considered in the course of the review?

The added transparency offered by a hardship flag will go some way towards addressing existing flaws in the current credit reporting framework. Currently, during the credit application process there is considerable asymmetry between the depth of information held by a customer regarding their personal financial circumstances and a prospective lender. In order to meet responsible lending requirements under the *NCCP Act*, lenders must be in a position to properly understand the customer's financial circumstances and this is currently not the case in many instances.

While hardship information is currently a significant omission, another is account balance data which is also not currently visible to a lender on a consumer credit report. Account balance information can reveal to lenders how indebted a borrower is, particularly in comparison to credit limits, and is therefore critical in assisting lenders when developing an accurate risk profile of a prospective

customer. The addition of this data to consumer credit reports would also serve to prevent the customer from becoming over-indebted, and offer earlier opportunities to intervene in the interests of the borrower.

Illion believes that the current legislative proposal to introduce mandatory CCR will go some way towards resolving this asymmetry, but that the introduction of a hardship flag (as well as the inclusion of account balance information) is crucial to realise the full consumer benefits from Australia's credit reporting system.