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Attorney-General's Department
Information Law
Civil Law Unit
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By email: privacy.consultation@ag.gov.au

Submission on Consumer Credit Reporting and Hardship review

The Office of the Australian Information Commissioner (OAIC) welcomes the opportunity to engage on the Attorney-General's Department (AGD) discussion paper, *Consumer credit reporting and hardship* (the discussion paper) as part of the AGD's *Review of financial hardship arrangements* (the Review).

The discussion paper seeks community input about the reporting of financial hardship information in the consumer credit reporting system, including whether the current approach should be changed, the reasons for any proposed changes, and the nature of any proposed changes.

As noted in the discussion paper, the consumer credit reporting system is regulated by Part IIIA of the *Privacy Act 1988* (Cth) (Privacy Act), the Privacy Regulation 2013 and the Privacy (Credit Reporting) Code 2014, for which the OAIC has regulatory responsibility, while financial hardship arrangements are regulated under national credit legislation by the Australian Securities and Investments Commission (ASIC). The OAIC considers that this Review provides a valuable opportunity to examine issues regarding the reporting of financial hardship information in the consumer credit reporting system.

Reporting of repayment history information under the current regulatory framework

As noted in the discussion paper, to provide clarity to stakeholders the OAIC has published an FAQ, *What does the term 'due and payable' mean in the definition of repayment history information?*¹ This FAQ provides guidance about how the OAIC would interpret the phrase 'due and payable', in the definition of RHI in s 6V(1) of the Privacy Act, when exercising its regulatory responsibilities.

¹ <<https://oaic.gov.au/agencies-and-organisations/faqs-for-agencies-orgs/businesses/what-does-the-term-due-and-payable-mean-in-the-definition-of-repayment-history-information>>

The FAQ was based on advice that was previously provided to the Australian Retail Credit Association (ARCA), consumer representatives and other relevant stakeholders in March 2017. The OAIC's view, in this advice, was informed by legal advice obtained by the OAIC, along with information provided by ARCA, the Financial Ombudsman Service (FOS), the Financial Rights Legal Centre (FRLC) and ASIC.

The OAIC has also published other guidance on RHI and hardship for consumers, which can be found on the OAIC's website.²

An efficient credit reporting system and respect for privacy

The OAIC is aware that there are a number of issues for industry and consumers associated with assessing and reporting RHI in circumstances of financial hardship. An object of the Privacy Act is to 'facilitate an efficient credit reporting system while ensuring that the privacy of individuals is respected'.³ In considering whether any changes are required, the OAIC suggests that regard is had to the extent to which any proposals would best achieve that balance, and in particular, to whether any proposed changes:

- enhance the accuracy of the personal information held within the consumer credit reporting system
- ensure consistent handling of hardship information by CPs and CRBs
- ensure CPs' practices, procedures and systems promote the transparent handling of personal information.

The OAIC is available to engage with the AGD further regarding issues raised as the Review progresses. If you would like to discuss these comments further, please contact Sophie Higgins, Director, Regulation & Strategy, on sophie.higgins@oaic.gov.au or 02 9284 9775.

Yours sincerely



Angelene Falk
Acting Australian Information Commissioner
Acting Privacy Commissioner

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² See *Privacy fact sheet 34: Repayment history information and your credit report*, at <https://oaic.gov.au/individuals/privacy-fact-sheets/credit-reporting/privacy-fact-sheet-34-repayment-history-information-and-your-credit-report>, and *Privacy fact sheet 38: Hardship assistance and your credit report*, at <https://oaic.gov.au/individuals/privacy-fact-sheets/credit-reporting/privacy-fact-sheet-38-hardship-assistance-and-your-credit-report>.

³ *Privacy Act 1988* (Cth), s 2A.