14 June 2024

Review of Australia's Credit Reporting Framework

By email: **creditreporting@ag.gov.au**

Arca submission to the Review of Australia's Credit Reporting Framework (the Review)

Arca welcomes the opportunity to make a submission to the Review in response to the Issues Paper published on 26 April 2024. As requested, please see below for some information to allow you to assess our submission for public release in due course:

Information	Response
Your name	Arca – otherwise known as Australian Retail Credit Association
Whether your submission represents the views of an organisation or group (and if so, identifying which one), or your personal or professional views	The submissions represents Arca's professional views about the credit reporting system and the questions in the Issues paper
Your email address and/or preferred contact number	Our preferred contacts in respect of the Review are Elsa Markula (Chief Executive Officer) and Richard McMahon (General Manager – Government and Regulatory). The Review secretariat has our contact details – those details are our preferred method for contact.
A statement that you consent (or do not consent) to the Attorney-General's Department contacting you in relation to your submission and the broader review	We consent – and welcome – the Attorney-General's Department contacting you in relation to your submission and the broader review. We consider that substantial amounts of further consultation are necessary in order for the Review to successfully be completed; our views on this topic are set out in more detail below.

A statement that you:
• **consent to your submission being made public:**
  ○ **under your/your organisation's name, or**
  ○ **anonymously, or**
• **do not consent to your submission being made public**
	We consent to our submission being made public.

About Arca

Arca is an industry association focussed on the use credit reporting and consumer data. We bring together Australia's leading credit providers and credit reporting bodies to improve data protection and use, and also to make credit more visible, accessible and easily understood. Our vision is to make credit work for all Australians.

Arca has over 50 Members, including Australia's leading banks, credit unions, finance companies, fintechs and credit reporting bodies and, through our Associate Members, many other types of related businesses providing services to the industry. Collectively, ARCA's Members account for well over 95% of all regulated consumer lending in Australia.

Arca has a unique role in respect to credit reporting in Australia. This includes:

- **Authoring and maintaining rules and data standards:** Through its subsidiary the Reciprocity and Data Exchange Administrator (RDEA), Arca has developed and maintained the business-to-business rules and data standards under which credit related personal information is exchanged between credit providers and credit reporting bodies. These rules and standards are the Principles of Reciprocity and Data Exchange (PRDE) and the Australian Credit Reporting Data Standards (ACRDS) respectively. The PRDE and ACRDS are essential parts of the operation of the credit reporting system. As at 1 June 2024, there are 115 signatories to the PRDE,[1] representing over 96% of regulated credit accounts in the Australian market.
- **Developing CR Code for OAIC consideration and approval**: Arca has been appointed as the developer of the CR Code, an 'an essential part of the regulatory structure of the credit reporting system' which provides additional practical detail on how 'the credit reporting provisions are to be applied or complied with'.[2] Arca has acted as the code developer for the initial version of the CR Code in 2013/2014, and all subsequent variations (2014, 2018, 2019, 2021/22 and, most recently, the yet-to-be-approved variation application lodged on 19 December 2023).
- **Consumer education and messaging:** Arca has also played an instrumental role leading consumer education on credit reporting, through its consumer-facing website, CreditSmart (**www.creditsmart.org.au**). Through development of CreditSmart resources Arca direct engagement with consumers through this website and ongoing consumer research, ARCA has gained significant exposure to consumers and their interactions with the credit reporting system.

The Review and our Submission

Arca is a strong supporter of the Review. A substantive review of the law applying to the credit reporting framework is long overdue, particularly in light of the technical issues that have arisen since Part IIIA of the Privacy Act was enacted in 2014, and the changes in the credit industry since that time. Arca has called for this Review to commence since long before the Reviewer and terms of reference were announced on 27 February 2024.

Based on the complexity of the credit reporting system and the legal framework governing its operation, Arca is concerned about the limited amount of time that has been made available for the Review. There will only be a seven-month period from the Review's commencement in late February through to the date the Review's Final Report must be provided to Government (1 October). Arca considers that this is not enough time to examine issues with the operation of the credit reporting system in sufficient depth, or to make appropriate recommendations for their resolution.

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[1] 107 of these signatories were actively participating; the others were due to commence active participation within the next 12 months.

[2] See the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, especially pages 4 and 92. There are other references in this Explanatory Memorandum to some of the matters expected to be prescribed in the CR Code.

Our concerns are exacerbated by the breadth, generality and number of questions in the Issues Paper, some factual errors in the text of the Issues Paper and well as the absence of a second formal, written consultation process. A second consultation process would provide an important opportunity for the Review to test information and views received from stakeholders with a wider audience, and to seek feedback on potential solutions or recommendations. In reaching this view, we note that many of the issues likely to be raised do not have obvious solutions, and would benefit from detailed consideration and input which is unlikely to be achievable through a single formal round of consultation.

In the absence of a second consultation process (and sufficient time for it to occur), we see a significant risk that the recommendations of the Review will:

- be based on factual errors, misunderstandings or an incomplete set of information;
- miss opportunities for simpler, more effective solutions to identified problems (because there has been insufficient time and opportunity for stakeholders to provide feedback on indicative/potential findings or recommendations); and
- be made without the type of analysis contemplated by e.g. the **Australian Government Guide to Policy Impact Analysis**.

We note that many other similar reviews of this nature have involved a multiple-stage consultation process.[3] Additionally, we observe that when developing the last round of changes to the CR Code, Arca conducted two rounds of consultation; a third, subsequent round conducted by the OAIC.[4]

In making this submission to the Review, we have sought to directly answer the questions asked, while also providing other information and context to:

- explain the operation of the credit reporting system and our views for how it can be improved; and
- correct potential misunderstandings or confusion about credit reporting and the issues the Review is exploring.

We have numbered the Issues Paper questions for ease of reference, as many questions overlap and answers to some questions are relevant to others. We have attempted to make these linkages clear, but our submission should be read as a whole.

As noted above, Arca has a broad membership with different perspectives on credit reporting based on their business models and experience to date. This includes a variety of views on how the system could or should be enhanced. In making this submission, we have attempted to put forward suggestions and make recommendations that are in the best interests of the credit reporting system as a whole: meaning individuals, credit providers (CPs) and credit reporting bodies (CRBs).

In our submission, we have made 36 recommendations for improvements to the credit reporting system – these are listed in order in the Recommendations List at the end of our submission. Together, they represent a significant body of proposals designed to enhance and modernise Australia's credit reporting system, and to maximise the extent to which the system achieves its policy objectives. Key highlights from Arca's recommended improvements include:

- expanding the categories of credit information to include additional fields, including balance and more detailed information about payments: see our responses to question 5.2.

[3] In this regard we refer to the Review of the Privacy Act 1988 and the Review of the small amount credit contract laws. Other jurisdictions have also undertaken multi-stage processes for reviewing credit reporting: see the FCA's Credit Information Market Study, which was also run a much longer period of time.

[4] See the Arca 2023 CR Code application, including Part B which sets out the consultation undertaken. The OAIC consulted publicly on Arca's application in April and May 2024.

- addressing technical issues with several definitions – and ensuring that wherever possible, the detail of definitions is within delegated legislation such as the CR Code to facilitate timely updates and innovation: see our responses to questions 3.4 and 5.3 in particular.
- Providing for a new mechanism – the fraud flag – to protect consumers at risk from conduct such as large-scale data breaches: see our response to question 6.3.
- Providing for additional tailored use-cases where credit reporting information can be used to support specified activities such as remediations and consideration of hardship requests: see our responses to questions 5.6 and 7.1.
- Removing restrictions on the ability of certain credit providers to disclose and access RHI and FHI: see our responses to questions 7.3 and 7.5.
- Providing for additional resources, as well as modification/exemption powers, for the regulator(s) responsible for credit reporting: see our responses to questions 3.5, 3.6 and 5.1.
- Ensuring that the legal framework is subject to regular independent review: see our responses to questions 3.5 and 5.1.

Arca stands ready to assist with the Review in any way possible. Please contact us if you have any questions or would like our feedback on any matters raised through the Review's work.

Yours faithfully

Elsa Markula

Chief Executive Officer

Arca

Table of Recommendations

Recommendations	Question
Recommendation 1 Part IIIA of the Privacy Act should be amended to allow for the provisions of the Privacy Regulation 2013 to be removed and replaced by provisions with the same effect in the CR Code. Any existing issues or out of date material in the Privacy Regulation provisions should be amended when those provisions are replaced with new provisions in the CR Code. This change would simplify the framework and ensure the details of relevant definitions are located together within the legal framework.	3.2
Recommendation 2 The Review suggest that a further, targeted piece of work be undertaken to consider what measures should be explored to increase consistency of the datasets held by CRBs. The work should focus on identifying what model or models of solutions are most feasible, and how any cost implications can be properly addressed. Given the nature of the input needed to understand the implications for CPs and CRBs, the work should take place in consultation with industry.	4.5
Recommendation 3 Where possible, detailed definitions of different types of credit information should be moved from the primary legislation into the CR Code, to allow for those definitions to be modernised over time.	5.1
Recommendation 4 The OAIC, as the agency responsible for administering Part IIIA of the Privacy Act, should have powers to: • provide exemptions from the provisions of the Part (for a person, a product, a class of persons or a class of products) • modify how the provisions of the Part apply to a person, a product, a class of persons or a class of products. Instruments that apply to a class of persons should be legislative instruments; other instruments should be notifiable instruments.	5.1
Recommendation 5 The law governing credit reporting should be subject to a formal review process every 5-6 years. Sufficient time should be made available for each review, and each review should involve a multiple-stage consultation process so that stakeholders have the opportunity to identify issues and provide feedback on possible/proposed outcomes.	5.1
Recommendation 6 The monthly outstanding balance of the consumer credit should be defined as a new type of credit information. The retention period for the information should be 2 years, and the information should only be available to CPs participating in comprehensive credit reporting.	5.2

Recommendation 7 Repayment History Information should include: • The payments due during the monthly reporting period (expressed as an aggregate dollar figure) • The payments made during the monthly reporting (expressed as an aggregate dollar figure) The Review should consider the extent to which information such as this is consistent with the definition of repayment history information in the Privacy Act, and whether e.g. such changes could occur through the CR Code.	5.2
Recommendation 8 The definition of CCLI should be amended to include the credit provider brand associated with the consumer credit. Any further specificity which is required could be provided under the CR Code.	5.2
Recommendation 9 The Review should consider the following: • Whether new arrangement information and information about serious credit infringements should be re as types of credit information under the Privacy Act; and • Whether the individual's sex should remain as a type of identification information (and therefore credit information) under the Privacy Act. We note that any change in respect of new arrangement information would also require amendments to the National Credit Act, as new arrangement information is expressly part of the mandatory credit regime	5.2
Recommendation 10 The definition of default information should be amended to remove paragraph 6Q(1)(c). Other amendments to the Privacy Act should be made to address the harm to individuals associated with default information being disclosed long after the relevant payment became overdue: see **Recommendation 21**.	5.3
Recommendation 11 Amendments should be made to the Privacy Act (and/or the Privacy Regulation or CR Code) to clarify: • whether any information about guaranteed credit is CCLI about the individual who has provided the guarantee; and • if so, the meaning of CCLI in the context of guarantees (i.e. what information is CCLI in respect of the guarantor, as distinct from CCLI in respect of the person provided with the credit). Any amendments should support information about guarantors and guarantees potentially being CCLI. The exact details of the amendments should reflect feedback from stakeholders about the benefit from, and challenges of, reporting such information.	5.3
Recommendation 12	5.3

The legal framework for credit reporting should be amended to clarify: • the meaning of the different types of CCLI once the relevant account is terminated or otherwise ceases to be in force; and • the extent to which historic CCLI can be disclosed and used. Arca considers that the clarifications should have the effect that: • the pre-closure limits, CP names and terms and conditions can be disclosed/used for the rest of the CCLI retention period; and • acceleration of an entire liability does not mean the credit limit of the account should need to be changed/reported as zero. These amendments could potentially occur through the CR Code, but the Review should still consider this issue and make a clear statement about what changes should be made.	
Recommendation 13 The Review should consider what changes can be made to facilitate CRBs being able to collect, disclose and use information about judgments relevant to the individual's creditworthiness. Consideration should cover the relevant provisions of the law, but also whether other practical measures could: • create certainty about what information a CRB can collect; and • significantly enhance the consistency of available information and the efficiency with which it can be collected.	5.3
Recommendation 14 Subsection 6QA(4) of Privacy Act (which relates to the timing of the reporting of FHI) should be amended to allow for greater flexibility to ensure that FHI can be reported in the appropriate month. Additional guidance could be included as necessary in the CR Code (which would, in any case, need to be updated to reflect the changes).	5.4
Recommendation 15 The hardship reforms should be amended to ensure that an up-front contractual variation giving effect to a short-term payment deferral can be reflected with FHI that is more similar to the FHI reported where the contractual variation happens at the end of the hardship assistance process (i.e. after a temporary FHA).	5.4
Recommendation 16 The Review should clarify that FHI, or information derived from FHI, can be disclosed to a CP through an alert, and then used to assist the individual to avoid defaulting on their obligations. The restrictions that normally apply to alerts should apply in this context. If some specific actions that could follow from an alert are undesirable (but are nevertheless permitted under the current law), then those actions should be prohibited (either in the Privacy Act or the CR Code) rather than resulting to all alerts being prohibited.	5.4
Recommendation 17 The Review should examine the effect of the restrictions of FHI (and information derived from FHI) in the context of assessing whether to assess the relevant individual as a guarantor, including whether removing the restrictions in s20E(4A) for this purpose would support the intent of the financial hardship reporting reforms.	5.4

Recommendation 18 The Privacy Act should be amended to permit the disclosure of credit reporting information by CRBs (and subsequent use by CPs) to allow for a CP to obtain updated information before making a protected increase to the credit limit of a low cost credit contract.	5.6
Recommendation 19 The Review should consider whether the retention period for FHI should be extended to 24 months, to align with the retention period for RHI.	5.7
Recommendation 20 As part of a suite of measures to enhance the credit reporting system (including the addition of extra types of credit information, the Review could consider whether a shorter retention period for information of the kind described in s6N(d) and (e) of the Privacy Act (such as three years) may be appropriate. Such a period could help address any confusion about the effect of enquiries – particularly aged enquiries that an individual may not recall – on an individual's creditworthiness.	5.7
Recommendation 21 The Privacy Act should be amended to include a new obligation that restricts the ability of CPs to disclose default information long after the default has first occurred (i.e. any default information that is going to be disclosed must be disclosed within a reasonable period). The relevant explanatory materials should provide guidance on the period within which disclosure can occur. In any event it should be clear that disclosing default information soon before, or after, the relevant statute of limitations period has expired is no longer permitted. As part of these changes s6Q(1)(c) should be repealed: see **Recommendation 10**. Note: **Recommendation 10** relates to the repeal of s6Q(1)(c) because that provision makes it impossible for CRBs to comply with the law.	5.8
Recommendation 22 The Review should recommend that a fraud flag be created to take the place of credit bans in the context of large scale data breaches. Fraud flags would: • be passed on to CRBs by a central party responsible for determining whether the data stolen was significant (i.e. could support an application for a credit product or bank account); • require CPs to take additional steps to verify the identity of the individual when subsequent applications for credit are made (and in doing so protect the individual without requiring them to take action); and • allow credit management activities to continue.	6.3
Recommendation 23 To the extent that credit bans remain a component of the credit reporting system, a credit ban should not prevent a CP from receiving and using credit reporting information solely to: • collect overdue payments; or • assist the individual to avoid defaulting on their obligations under the credit.	6.3
Recommendation 24	6.3

To the extent that credit bans remain a component of the credit reporting system, the initial period for a credit ban should be longer than 21 days.	
Recommendation 25 The law relating to RHI should allow for an individual who has made the vast majority of a payment (such that any underpaid amount is below the CP's threshold for attempting to collect the money owing) to be treated as 'up to date' (i.e. as though they have met their monthly payment obligations), provided that this is otherwise consistent with the CP's treatment of that customer for other collections-related purposes. How this is given effect to (e.g. whether it is a set amount or an amount determined by the CP based on principles in the law) should be subject to further consultation.	6.3
Recommendation 26 The Review should recommend additional reforms covering the conduct of credit repair firms to reduce the harms those firms present to individuals, CPs and the credit reporting system generally. These reforms should place specific controls on the practices of credit repair firms to address incentives to seek unfounded correction requests. Specific consideration should be given to the reforms proposed in 2015 by the University of Melbourne.	6.4
Recommendation 27 The Privacy Act should be amended to permit the disclosure of credit reporting information by CRBs (and subsequent use by CPs) to: • Assist a CP to pay remediation to that person; and • Alert a CP that another CP has disclosed bankruptcy information about one of their customers; • Assist a CP to make a decision on its response to a hardship notice; and • Assist a CP to consider a request for a change to the terms and conditions of the credit contract (such as changing to interest-only repayments or moving from variable to fixed interest rate). Note: Arca has also recommended a similar use case for protected increases for low cost credit contracts (e.g. BNPL credit): see **Recommendation 18**.	7.1
Recommendation 28 The Review should consider whether the current threshold for triggering alerts under the Privacy Act and the CR Code - that an individual is at significant risk of default - should be amended to allow CPs to provide earlier, more effective assistance. Strict controls should remain on the ability to provide alerts for this purpose.	7.1
Recommendation 29 The requirement to hold an Australian credit licence in order to access or disclose RHI and FHI should be removed.	7.3
Recommendation 30 Amend the provisions in the mandatory credit regime in Part 3-2CA of the National Credit Act to remove the focus on the need to supply 100% of credit information about eligible credit accounts.	9.4
Recommendation 31	9.5

The Review should avoid applying the obligations in Part 3-2CA more broadly without significant changes to that regime to reduce the inflexibility of those obligations and the unintended effect on participant incentives. Rather, any measures to mandate participation in comprehensive credit reporting should: • be as light-touch as possible – only relying on direct obligations to supply information where absolutely necessary; • only apply to CPs who are not already participating in comprehensive credit reporting; and • only be implemented where voluntary compliance does not occur or is not sustained.	
Recommendation 32 Consistent with Recommendation 31, consideration should be given to future mandating of participation by BNPL credit providers if meaningful participation at the comprehensive level does not eventuate.	9.5
Recommendation 33 Division 4 of Part 3-2CA of the National Credit Act, and the associated regulations, should be repealed.	9.6
Recommendation 34 If the mandatory credit reporting regime is retained, then the mandatory supply obligations should align with the exemptions in the PRDE as updated from time to time. If this is not possible, then: • section 133CO should also allow for regulations to be made to determine accounts which are not eligible credit accounts; and • the accounts excluded by the ***ASIC Credit (Mandatory Credit Reporting) Instrument 2021/541*** should be excluded by regulation instead – in order to promote simplicity and reduce the burden of maintaining the regime.	9.6
Recommendation 35 If the mandatory credit reporting regime is retained such that the previously-granted ASIC no-action positions remain necessary, then those positions should be given effect to via amendments to the National Credit Act or National Credit Regulations.	9.6
Recommendation 36 If the mandatory regime is retained in the current form, regulations should be made under s133CN(2)(b) of the National Credit Act to specify when CRBs are eligible CRBs that need to be supplied with information under the mandatory credit reporting regime. In doing so it may be desirable to ensure that eligible licensees are subject to similar obligations.	9.6

Responses to Issues Paper questions and commentary

1. The what and why of credit reporting

Before we answer the question asked in Part One, we make the following comments to expand upon the description of the credit reporting system in this part of the Issues Paper.

Purpose and function of credit reporting

While we agree that allowing CPs to access information to assess applications for credit is a key aspect of the rationale for the credit reporting system, it is not the only reason the system exists or the only function the system serves.

Credit reporting information is available for other uses, including allowing to build and review risk profiles for their customers and products, collect overdue payments, assist individuals to avoid default risks, assess whether to accept guarantees and to operate securitisation models. These uses allow for informed decision making and better management of credit across the life of the relationship between the CP and their customer. De-identified information from the credit reporting system is also capable of being used for research purposes, including to manage or develop new services, develop methods to combat unlawful activity and assist CPs to better comply with their other obligations.[5]

Any assessment of the credit reporting system should also consider the additional functions and use cases mentioned above. Arca has identified a small number of additional situations where the data from the credit reporting system could be used to improve consumer outcomes and CP operations: see **Recommendation 27** and our response to question 7.1.

1.1 How important is Australia's credit reporting framework?

Credit reporting plays an important role in a country's financial infrastructure by supporting the function of the credit system. This is the case in Australia, noting that the role of credit reporting has been long-recognised across the developed and developing world, including by the World Bank[6] and the Organisation for Economic Co-operation and Development (OECD).[7] The World Bank principles include explicit recognition that the functioning of a credit reporting framework requires the inclusion of positive data – which is relevant, accurate, timely and sufficient and collected from reliable, appropriate and available sources, and retained for a sufficient period of time.

In our response to question 3.1 we further explain the importance of credit reporting to addressing issues of information asymmetry which would otherwise exist in the absence of a credit reporting system (and which persist where credit reporting systems do not operate consistently with the World Bank principles).

Until the introduction of comprehensive credit reporting (CCR) in Australia in 2014, Australia's credit reporting system significantly lagged behind the rest of the developed world (and was significantly out of step with the World Bank principles) in that it only allowed for the collection, disclosure and use of negative information. The inclusion of consumer credit liability information (CCLI) and repayment history information (RHI) has partially redressed this laggard status. However, Australia's credit reporting system remains more restricted than much of the developed world, generally containing less information and

[5] See s20M of the Privacy Act and the Privacy (Credit Related Research) Rule 2014.
[6] See the World Bank's General Principles for Credit Reporting, dated September 2011.
[7] See the OECD's Discussion Paper on Credit Information Sharing.

allowing that information to be retained for shorter periods than in other jurisdictions. These differences are outlined in more detail in our responses to questions 5.2 and 5.7.

In general terms, credit reporting is important for:

- **Individuals:** In that it simplifies the process for obtaining credit, reduces the risks that they receive unaffordable amounts of credit (e.g. which place them at risk of harm), ensures they are rewarded for positive behaviour in turn fostering financial inclusion, supports competition between CPs and places downward pressure on the cost of credit (by allowing CPs ready access to information and e.g. supporting good decision making).
- **CPs:** In that it mitigates information asymmetries which make it more difficult for them to make appropriate decisions in response to credit applications, reduces regulatory and credit risk, allows them to simplify their application processes, enables them to support their customers (through uses in the context of credit management) and promotes competition.
- **The economy**: in that the benefits accruing to CPs support the operation of the credit market, enabling that market to operate in a more efficient and stable manner than would otherwise be possible.

These issues are touched on in more detail elsewhere in our submission, in particular in our responses to questions 2.1, 3.1, 4.1 and 5.2.

Given the essential nature of the credit reporting system, the framework which allows the system to operate is extremely important. For these purposes, the framework is not just the Privacy Act, but also industry-led components such as the PRDE and ACRDS. Collectively these components:

- enable the operation of the comprehensive credit reporting system – as outlined above is an important piece of Australia's economic infrastructure
- provide certainty to all parties about what information can be retained within the credit reporting system, how that information is to be provided and what it can be used for.

Credit reporting is complex, and this complexity and the need for precision mean that it is essential that credit reporting system is supported by a robust framework.

2. Strategic, historical and international context

We note that the discussion in Part 2 of the Issues Paper does not mention several other important milestones and developments relevant to the operation of credit reporting in Australia, including consideration of credit reporting by the Financial System Inquiry (FSI)[8] and the Productivity Commission,[9] the establishment of the PRDE and its subsequent authorisation (and reauthorisation) by the Australian Competition and Consumer Commission (ACCC),[10] and the significant increase in participation in comprehensive credit reporting since 2017.[11]

2.1 Has the policy rationale for regulating credit reporting changed or remained the same since the legislative framework was first adopted?

As we understand it, the policy rationale for regulating credit reporting is a combination of:

- the objective of realising the potential benefits that arise from the operation of a credit reporting system;

[8] See Financial System Inquiry: Final Report (2014) at pages 190-192.
[9] See Productivity Commission, *Data Availability and Use*, Report No 82 (2017). The draft report and issues paper for this review also cover credit reporting in some detail.
[10] The ACCC's 2015 Authorisation of the PRDE is available here.
[11] Arca published 10 versions of the Credit Data Fact Base to track the implementation of comprehensive credit reporting.

- the need to provide certainty about what information can be collected, disclosed and used, and when and how that can occur; and
- the need to protect individuals – both from an undue loss of privacy associated with credit reporting, but also because of the risks of poor outcomes if e.g. there is incorrect information about them within the credit reporting system.

In that regard, we observe that the policy rationale is largely unchanged – the case for credit reporting, and the need for appropriate guardrails around the system's operation to ensure good outcomes for consumers and efficiencies for CPs and CRBs, is still the same.

However, the credit market in which the credit reporting system is operating has evolved significantly since comprehensive credit reporting was recommended by the ALRC in 2008, and subsequently reflected in legislation in 2014. For instance:

- The regulation of credit has been transformed, with the creation of the National Credit Act and the responsible lending obligations. This has substantially enhanced CP decision-making in respect of credit applications, and imposed new obligations also relevant to the CP's ongoing relationship with their customers.
- Innovation has led to new products and services, such as risk-based pricing, digital only offerings and buy now pay later credit. In the case of the first two enhancements, the existence of the credit reporting system (and timely access to the data within it) may have contributed to the viability of these innovations.
- Consumer expectations have changed, with greater desire to access and purchase products and services online, and corresponding expectations about their ability to e.g. apply for credit in a simple, convenient way and receive a prompt response.
- Regulatory expectations and settings have also changed – at the macroeconomic level there has been an increased focus on financial stability, while regulators focused on the individual relationships between CPs and their customers have greater expectations on CPs to take proactive steps to look for, and help individuals avoid, financial hardship.[12]

These changes collectively mean that the credit reporting system is more important than ever. That is, while the general case for credit reporting (and regulating credit reporting appropriately) is unchanged, the need for quick access to consistent, relevant and reliable information about an individual has grown. In this regard we observe that credit reporting can potentially:

- enable CPs to offer forms of credit which would otherwise not be possible without fast, consistent access to data;
- support convenient CP processes for applying for credit which meet consumer expectations around form and complexity;
- empower CPs to better comply with their legal obligations and the expectations of their regulators – all of which are focused on ensuring that individuals receive appropriate products and that risks of consumer harm are mitigated;
- support the smooth operation of the credit market, which in turn fosters economic stability (even when global events lead to significant amounts of disruption and uncertainty).

3. Australia's credit reporting framework

3.1 What are the main harms that the regulatory framework should seek to address today?

[12] See ASIC Report 782 *Hardship, hard to get help: Findings and actions to support customers in financial hardship* (REP 782) at pages 43-44 and ASIC Report 580 *Credit card lending in Australia* (REP 580) at paragraphs 54-56 and 166-191.

While the regulation of credit reporting addresses harms, it is important to acknowledge that the existence of the credit reporting system itself also addresses a range of harms. Many of these harms relate to information asymmetry: the fact that an individual knows more about their own circumstances than a CP. Without credit reporting, information asymmetry would mean:

- **Lower quality credit decisions and credit management**. Information asymmetry leads to adverse selection (i.e. gaps in information available to CPs incentivise higher risk applicants to apply for credit, and lead to a more risky credit portfolio than desired) and moral hazard (i.e. consumers have stronger incentives to hide parts of their credit history, in order to obtain more credit).[13] These issues increase the costs of credit, and increase the risk of default, causing harm for the consumers involved. Information asymmetry can also lead to increased regulatory risks for CPs (as decisions are based on lower quality / incomplete information), and reduced access to information for credit management purposes imposes additional costs on CPs, as more payments may be missed or the individual's situation may deteriorate before it comes to the CP's attention.
- **Longer and more complicated credit assessment processes** are required in the absence of credit reporting, which imposes costs and burden on both CPs and consumers. Any costs on CPs from extra steps needed to overcome information asymmetry are ultimately passed on to their customers.
- **Unduly limited access to finance, especially for low risk consumers**, as it is more difficult (or impossible) for CPs to determine that a customer is low-risk and to systematically offer lower-priced products to this cohort.

These harms occur to both CPs and their customers. In the absence of sufficiently robust credit reporting, there is harm to the economy associated from reduced access to credit and less stable operation of the credit market, which has substantially wider implications for Australian consumers.[14] In the absence of a well-functioning credit reporting system, the economy is less stable, exposing Australians to undue risks of harm.

Regulation of credit reporting allows these harms to be mitigated or avoided, by permitting the operation of the system. Detailed rules about the operation of the system also allow for the following key risks to be addressed:

- **Inconsistent data harming all parties**. Harms arise from data inconsistencies between CPs leading to misinterpretations of the credit reporting data and therefore lower quality or unintended decisions. The regulatory regime helps to address this harm by specifying the types of information that can be collected, disclosed and used to a high degree of detail, promoting consistency and certainty amongst CPs.
- **Data errors**. Data errors harm individuals by reducing their access to credit (e.g. if the error suggests they are a high credit risk) or by facilitating inappropriate access to credit that could cause harm. Data errors also harm CPs if e.g. an error is the basis for the CP's decision. Rules requiring data to be corrected, as well as the specificity of the data that can be disclosed and what that data means are important controls against this risk. As noted above, the definitions of various terms also promote CP confidence in the credit reporting system and the data within it. The data correction process should not incentivise unfounded corrections (e.g. encourage CPs to delete/correct accurate information on request due to cost constraints) – although these corrections could appear to be in the consumer's interests, they in turn create data errors through the removal of accurate information.

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[13] See Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) Ch 52, where these issues are outlined in more detail. Further analysis is also available in Productivity Commission, *Data Availability and Use*, Report No 82 (2017), especially pages 552-553, which refers to other relevant publications providing evidence of these benefits.

[14] See Productivity Commission, *Data Availability and Use*, Report No 82 (2017), especially page 20.

- **Risks of fraud by third parties**. Fraudulent credit applications harm CPs (as such credit is very unlikely to be repaid), increase the cost of credit for other individuals and, in cases of identity theft, harm the individual whose identity is stolen. The credit ban framework provides an important external data point for CPs to determine if there is a risk of fraud associated with a given application.
- **Undue loss of privacy for individuals**. In theory, the credit reporting system may operate more effectively by permitting any data which has any bearing (however tenuous) on an individual's creditworthiness to be collected, disclosed and used. Given the sensitive nature of this type of information, such a system would unreasonably encroach on a consumer's privacy and undermine trust in the operation of the system. Restrictions on the types of information within the system allow for an appropriate balancing of the benefits obtained from access to certain data against benefits from keeping that information private. Restrictions, if set correctly, also provide certainty to CPs and CRBs about what information can be collected, disclosed and used (and when that can occur).
- **The risk that individuals cannot recover from past mistakes/poor behaviour**. Without limits on the retention of information, individuals could have significant issues accessing credit for a very long period of time after e.g. a default. By setting retention periods, the regulatory regime addresses this risk and promotes access to credit for consumers whose behaviour has changed.

Arca's view is that an appropriate regulatory regime done right not only maximises the benefit of credit reporting, but actively reduces the risks for harm to individuals. We observe that many of the risks we have highlighted are addressed by the current regulatory regime – often in multiple ways. We have concluded that the scope of, and policy basis for, the regulatory regime is broadly appropriate. However, we have some material suggestions for improvement to the regulatory framework, as outlined throughout this submission.

3.2 How could the legislative framework for credit reporting be improved or simplified?

We agree with the implicit premise of this question that the legislative framework is complex. In some cases, this reflects the complex nature of credit reporting. For instance, the regime needs to specify particular pieces of information, parties and movements of information in the abstract, in a manner which works in all circumstances. Describing and permitting a framework that performs these functions inherently leads to a lot of complexity. In some cases, the complexity of the legislative framework reflects past law design choices.

However, Arca's view is that the legislative framework for credit reporting is generally working well, and is doing what it is intended to do.

Improvement

Arca has a number of suggestions for how the legal framework can be improved. These recommendations – and the reasons for them – are set out in detail in our submission. However, by way of overview, we consider the legislative framework should be improved by:

- expanding the categories of credit information to include additional fields, including balance, credit provider brand and more detailed information about payments (see our response to question 5.2 and Recommendations **7**, **8** and **9**)
- addressing technical issues with several definitions – and ensuring that wherever possible, the detail of definitions is within delegated legislation such as the CR Code to facilitate timely updates and innovation (see our response to questions 5.1 and 5.3 and **Recommendation 3**)
- Providing for a new mechanism – the fraud flag – to protect consumers at risk from large-scale data breaches (see our response to question 6.3 and **Recommendation 22**)

- Providing for additional tailored use-cases where credit reporting information can be used to support specified activities such as remediations and consideration of hardship requests (see our responses to questions 5.6 and 7.1 and Recommendations **18** and **27**)
- Removing restrictions on the ability of certain CPs to disclose and access RHI and FHI (see our responses to questions 7.3 and 7.5 and **Recommendation 29**)
- Providing for additional resources, as well as modification/exemption powers, for the regulator(s) responsible for credit reporting (see our response to question 5.1and **Recommendation 4**)
- Ensuring that the legal framework is subject to regular independent review (see our response to question 5.1 and **Recommendation 5**).

Simplicity

To that end, Arca expresses caution about widescale changes to the legislative framework which aspire to achieve simplicity. Such changes, such as re-writing large parts of the law and/or co-locating the provisions of Part IIIA of the Privacy Act and the mandatory CCR Regime in one place, would likely involve a significant degree of effort for Government, CRBs and CPs, with minimal practical advantages. Any significant simplification measure comes with risk – matters which work well now for all parties could be unintentionally disrupted if there are issues with the new, simplified law.

However, we do believe some small-scale measures, which are consistent with greater simplicity, should be considered. The Privacy Regulation contains a small number of additional provisions relating to credit reporting, including detail of definitions of some kinds of CCLI.[15] Arca's view is that it would be preferable for the provisions of the Privacy Regulation to be moved to the CR Code. We consider that this change would have the following advantages:

- **Similar status, so no loss of involvement, protections or rights for third parties:** The CR Code and Privacy Regulation have similar status as legislative instruments. As such, transferring the provisions over would not prevent stakeholders from providing input through consultation processes. Additionally, both the Privacy Regulation and the CR Code are subject to the same limitations as legislative instruments (i.e. they are subject to sunsetting under the *Legislation Act 2003*, and may be subject to disallowance motions).
- **Simplifies the legal framework:** It would reduce the number of places relevant parties need to look to view and interpret the law governing credit reporting – inherently simplifying the framework.
- **All provisions could be reviewed more frequently and updated more easily:** The CR Code is subject to more regular reviews than the Privacy Regulation, providing more opportunities for issues with e.g. definitions or exclusions to be promptly identified and rectified without requiring Government to dedicate priority or drafting resources.
- **Consistency of subject matter:** In Arca's view, many of the regulations in the Privacy Regulation cover similar subject matter to the CR Code, including definitions of certain terms,[16] the detail of repayment history information[17] and how the regime applies to certain entities.[18]

We also note our comments below in our response to question 5.1 about how placing definitions within the CR Code has allowed those terms to be more easily updated and refined over time as needed. We believe the same benefits would apply to the provisions currently in the Privacy Regulation. Any minor changes to the legal framework needed to make this change possible – such as clarifying that the CR Code could include the types of prescriptions covered in the Privacy Regulation – should also be made.

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[15] See regulation 6 of the Privacy Regulation 2013.

[16] See regulations 6, 10 and 11 of the Privacy Regulation 2013, and paragraph 1.2 of the CR Code.

[17] See regulation 12 of the Privacy Regulation 2013, and paragraph 8.1 of the CR Code.

[18] See, e.g. regulations 7, 8, 9 and 13AA, and also paragraphs 1.1, 2.3 and 2,4 of the CR Code. In the 2023 CR Code Application, Arca has proposed re-writing the application provisions in a way which would also allow for those provisions to clarify when/how the Privacy Act and CR Code should apply to the types of entities named in the Privacy Regulation.

Recommendation 1

Part IIIA of the Privacy Act should be amended to allow for the provisions of the Privacy Regulation 2013 to be removed and replaced by provisions with the same effect in the CR Code. Any existing issues or out of date material in the Privacy Regulation provisions should be amended when those provisions are replaced with new provisions in the CR Code. This change would simplify the framework and ensure the details of relevant definitions are located together within the legal framework.

Note: Arca has also made more general recommendations about placing the details of definitions about credit reporting in the CR Code: see Recommendation 3.

3.3 Should credit reporting legislation be more aligned with financial services regulation, including the regulation of consumer credit, and the Consumer Data Right?

Arca considers that questions about 'alignment' should not be considered in the abstract, or on the basis that "alignment" is a desirable outcome in and of itself. Instead, any consideration of the regulatory regime for credit reporting should be based on:

- What that regime is intended to achieve (i.e. the policy problems it is intended to solve); and
- The extent to which the regime is actually solving those problems.

Put another way, the basis for changes to the law around credit reporting should be the extent to which the law is consistent with the policy objectives of credit reporting (and the regulation of the framework) – not subsequent developments in other, loosely related areas.

More generally, we observe that the regimes mentioned in the question exist for different reasons to the credit reporting regime and seek to solve substantially different policy problems. To that end we note:

- The regulation of consumer credit through the National Credit Act is about imposing standards on the relationship between an individual and CPs and intermediaries in the credit market, including ensuring that lenders are honest and competent, lending decisions are prudent and that individuals have rights of recourse (including through dispute resolution processes).[19]
- The consumer data right is about providing individuals (and businesses) with a convenient way to use data relating to them for their own purposes, including providing easy access to that data to third party businesses.[20] In this context CDR exists to facilitate consumer-driven decisions and shopping around.
- The credit reporting regulatory regime exists to balance an individual's interests in protecting their personal information with the need to ensure sufficient personal information is available to assist a CP to determine an individual's eligibility for credit following an application for credit by an individual, and for related matters (such as credit management). The move to comprehensive credit reporting was about providing additional information to CPs to improve their decision-making, as well as placing downward pressure on over-indebtedness, default rates and the cost of credit for individuals.[21]

[19] The rationale for the consumer credit regime is explained in detail in the Consolidated Explanatory Memorandum to the National Consumer Credit Protection Bill 2009. See in particular paragraphs 2.14, 3.11-17 and 4.12.

[20] See the Explanatory Memorandum to the Treasury Laws Amendment (Consumer Data Right) Bill 2019 at paragraphs 1.9 and 1.16.

[21] See the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012, including the description of Schedule 2 at pages 2-3.

Given these differences, care should be taken when considering what 'alignment' is actually desirable. As noted in our response to the specific question about CDR, some or all of these regimes are complementary at best, and not replacements for one another.

We also observe that some features of the credit reporting framework are highly tailored to that regime, and reflect the nature of credit reporting. For instance, the involvement of the industry in the overall architecture governing credit reporting (through the development of the CR Code, the PRDE and the ACRDS) in part reflects the complexity of the credit reporting system, as well as the fact that many of the key aspects of the regime are about the business-to-business connections between CRBs and CPs (rather than e.g. managing the legal relationship between an individual and their product or service provider).[22]

However, there are some areas where there could be grounds to improve the law around credit reporting in ways that would make the regime more similar to other legislative regimes (and/or reflect developments after the enablement of comprehensive credit reporting). These include:

- Changes to simplify the regime to ensure that more detail is contained in delegated legislation (see **Recommendation 3**). Changes of this nature could be broadly similar to the design of the CDR regime where substantial amounts of detail are in e.g. the rules.
- Future consideration of whether the credit reporting regime could be supplemented by individuals choosing to provide other structured information to CRBs on an opt-in basis. This is a feature of other credit reporting systems,[23] but outside what is permitted by the framework in Australia. Consumer choice and consent-based additions could mirror aspects of the CDR; given the policy problems credit reporting is intended to solve (information asymmetry, adverse selection and moral hazard), it is essential that the core data in the credit reporting system rely on protections *other* than consent.

There are also opportunities to improve *other* regimes to reflect the design and operation of the comprehensive credit regime under the Privacy Act. The credit reporting regime tightly constraints the collection and use of specified types of information, which may reflect that individuals do not have to consent to their information being disclosed to CRBs. Arca has proposed changes to improve the operation of the consumer data right regime to include standardised 'bundled consents', which would incorporate the relevant protections and permissions applying to credit reporting data under Part IIIA of the Privacy Act.[24] Feedback from Arca Members is that the complex consent framework under the CDR Rules and standards are a key impediment to the widespread adoption of the consumer data right by the credit industry (as well as the development of processes reliant on CDR data). Further information about the interaction of comprehensive credit reporting and the CDR regime is below at our response to question 5.9.

3.4 Is the purpose and scope of CR Code appropriate? What provisions in the Act should be referred to the Code, and vice versa?

Yes – the purpose and scope of the CR Code are largely appropriate, although there would be advantages from widening the scope in some places.

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[22] The rationale for an industry-developed Code that forms part of the legal framework is also explained in detail in Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) Ch 54 at 54.182-203 and in the Regulation Impact Statement accompanying the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012. Arca supports the rationale for the CR Code.

[23] For example, see the Experian Scoreboost product available in the United States of America.

[24] See Arca's submission to the CDR Consent Review – CDR rules and data standards design paper, for more information about Arca's proposals and the issues with the current CDR regime.

The purpose and scope of the CR Code reflects the ALRC's analysis,[25] as well as the assessment in the Regulation Impact Statement that accompanied the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.[26] In general, the CR Code is intended to deal with a range of operational matters necessary to ensure effective compliance with the Privacy Act provisions. It is also intended to:

- **'fill in the gaps' in the provisions in the law**, and deal with application of, or compliance with those provisions;
- **Avoid the need for technical detail in the legislation** – including detail about operational procedures or which reflects technical standards and practices;
- **Be industry-developed**, because of the need for industry to have a greater involvement in developing procedures which affect their day-to-day compliance with the Privacy Act (and also noting the observations in the relevant RIS that the regulator may "not have the necessary industry knowledge to provide specific guidelines on operational and procedural issues" and "would need to devote resources to developing amendments"); and
- **Be part of the legal framework approved by the regulator**, which supports consistency of practice, ensures that all parties have the opportunity to provide input through public consultation and provides the regulator with the chance to ensure that the CR Code strikes an appropriate balance between the privacy needs of individuals and the operational needs of the CRBs and CPs.

Arca supports this purpose and scope, and the previous analysis which underpins in. In our experience, the CR Code model has worked well. It has allowed for regular updates to provisions (see, for instance, the changes made to account opening and account closure definitions, to better reflect CP systems and provide more certainty and consistency of reporting) in ways which have not been achieved for provisions in the Privacy Act or Privacy Regulation.

As noted elsewhere in our submission, we believe there are opportunities to leverage the successes of the CR Code framework to simplify the legal regime. This includes incorporating the provisions in the Privacy Regulation within the CR Code (see our response to question 3.2 and **Recommendation 1** above), and that wherever possible, detailed definitions should be placed within the CR Code (see our response to question 5.1 and **Recommendation 3** below). Other than these changes, the scope and purpose of the CR Code should be retained as-is.

3.5 How can the regulatory oversight arrangements for credit reporting be improved?

Although the credit reporting system has generally worked well, there are opportunities to improve the regulatory oversight arrangements. These are outlined in various parts of our submission, but these opportunities include:

- **Improving the resourcing and powers of regulators with responsibility for credit reporting**, to ensure that they can take an active role in respect of the credit reporting system. As noted below, Arca's view is that regulators with responsibility for credit reporting appear to be under-resourced: see our response to question 3.6. Additionally, providing an exemption and modification power (see **Recommendation 4**) would improve oversight arrangements by allowing for uncertainty or technical issues to be dealt with promptly, promoting more consistent practices by CRBs and CPs.
- **Continued focus on consistent decisions and approaches from external dispute resolution (EDR) schemes** – EDR schemes, including the Australian Financial Complaints Authority

[25] Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) Ch 54 at 54.182-203.

[26] See Part B of the Regulation Impact Statement accompanying the Explanatory Memorandum to the Privacy Amendment (Enhancing Privacy Protection) Bill 2012.

(AFCA), the Telecommunications Industry Ombudsman (TIO) and state-based energy ombudsman schemes play a significant role in providing oversight of system compliance. It is critical that these schemes have a strong, consistent understanding of the legal framework, and this is reflected in the decisions made by these schemes. Arca's observation is that maintaining necessary integrity measures can be challenging given large dispute volumes, and the focus that these schemes have on achieving early resolution of disputes (even where that resolution may involve the removal of otherwise accurate information). Given that scheme participants will be bound by the decisions made by these schemes – these inconsistent outcomes can have flow-on effects for industry and create considerable uncertainty.

- **Conducting regular reviews of the legal framework to ensure it remains up-to-date and functioning appropriately** (see **Recommendation 5**). In addition to the benefits outlined below, regular reviews allow for issues about regulatory oversight to be addressed, and may generally improve confidence in the legal regime as stakeholders have the opportunity to express concerns and make recommendations for change.

As noted above, Arca strongly supports the current role for industry within the framework for credit reporting, including through the development of the CR Code, as well as the PRDE and the ACRDS; these features of the framework should be retained.

Arca does not have any comments to make about which regulators should be responsible for administering the law governing the credit reporting framework.

3.6 Do the regulators have sufficient powers, resources and expertise to regulate credit reporting effectively?

There are opportunities to enhance the regulatory framework by improving the operation of the regulatory agency or agencies responsible for administering Part IIIA of the Privacy Act and the Mandatory CCR Regime. Arca believes that regulator(s) responsible for these areas of the law should be high-performing, with appropriate skills, resources and powers for their roles, as good regulation makes it more likely that the policy objectives of the law are achieved. Good regulation:

- **Increases trust and confidence in the regulated activity** (i.e. credit reporting) and the law that governs it
- **Drives more consistent practices** (i.e. as the regulator has the powers, expertise and resources needed to address inconsistencies or poor practice, change undesirable behaviours)
- **Deals with poor behaviours:** For instance, a well-resourced, capable regulator is better placed to ensure that harmful breaches of the law are remedied and responded to appropriately, and is more likely to create a meaningful deterrence effect
- **Supports innovation:** Clarity of regulatory requirements helps parties develop new products and services within the regime permitted by the law**.**

These benefits listed above are inter-connected.

It is also important to note that the credit reporting framework includes elements of self-regulation (such as the PRDE and ACRDS) and co-regulation (such as the CR Code framework). We consider that this is working well and reflects the particular problems each component is intended to solve, as well as the need for substantial technical expertise for some elements of the system: see our responses to questions 3.7 and 3.8 for further information. However, for these purposes we highlight that:

- good regulation in the context of credit reporting is not solely about Government bodies such as the OAIC and ASIC – industry has a role to play as well;
- given the regulatory structure, it is critical that regulators have the powers, resources and expertise needed to engage with and understand the self-regulatory and co-regulatory components, so that those components work together.

In respect of the current regulator(s), Arca's view is that the OAIC is under-resourced for its role and remit. We note that the resourcing of the OAIC has been raised in other contexts, including the 2021 CR Code Review,[27] Review of the Privacy Act[28] and consideration of the freedom on information framework the OAIC administers.[29] Arca has also previously raised concerns with the level of resources available to the OAIC to undertake proactive monitoring and enforcement activities.[30]

Arca considers that additional resources are required for regulators to administer the law around credit reporting, noting that at present credit reporting is just one of the OAIC's areas of responsibility. Credit reporting is a complex area, and additional funding would allow the regulator to engage more frequently with industry about emerging issues, and also to provide more confidence that the regulatory regime is being administered appropriately through increased monitoring and compliance/enforcement work.

Arca does not have detailed comments on the compliance powers available to the regulators to administer the laws for which they are responsible. However, as outlined elsewhere in our submission, there would be numerous advantages from ensuring that regulators have powers to provide 'relief' from the law, through modification and exemption powers (see **Recommendation 4** below). These powers would allow the regulators to address unintended consequences/fix errors with the law, ensure the regulatory regime reflect developments/innovations, and address any unduly burdensome application of the regime.

3.7 Is Arca's role in developing industry-wide credit reporting rules and standards appropriate?

Yes – Arca's role (in respect of the CR Code) and the RDEA's role (in respect of the PRDE and the ACRDS) remain appropriate.

CR Code

As outlined in our response to question 3.4, we support the current purpose and scope of the CR Code (subject to Recommendations **1** and **3** that that scope be broadened). That is, it is still appropriate that the CR Code is industry-developed; the reasons which motivated the framework to be established in this form in 2014 are still valid, and our experience has been that the CR Code has been a flexible tool for updating the regulatory framework around credit reporting. We also note:

- **The CR Code is an appropriate response to complexity:** Credit reporting is especially complex – and having the first draft of any additional detail and rules prepared by subject matter experts from industry reduces the risk of changes that do not operate as intended. Additionally, having a body such as Arca develop the first iteration of draft provisions of the CR Code makes it easier to obtain feedback from all parties. For instance, our experience suggests that some CPs and CRBs may struggle to provide sufficiently open feedback to the regulator about technical matters (particularly if the feedback reveals they are at risk of non-compliance with the Privacy Act).
- **Consistent with innovation:** The framework for the CR Code means the delegated legislation is subject to regular independent review – far more than is generally the case for Regulations or regulator-made rules. This has meant that the CR Code has been kept up-to-date over the past decade, with multiple changes made across that period. Arca, as code developer, increases the opportunity for industry to develop potential updates on their own initiative – for instance in response to innovations or new products/services. Otherwise, updates to the regulatory framework would be entirely contingent on Government resources being available.

[27] See Proposal 12 of the 2021 CR Code Review Final Report, and the discussion at pages 45-47.
[28] For instance, see Privacy Act Review – Discussion Paper at page 181. There has also been public commentary about stakeholder comments to the Privacy Act Review about the OAIC's funding.
[29] See Senate Standing Committee on Legal and Constitutional Affairs, Parliament of Australia, *The operation of Commonwealth Freedom of Information (FOI) laws*, (2023).
[30] See page 17 of Arca's submission (Annexure A) to the CR Code Review, and Proposal 12 from that review.

- **Numerous precedents exist:** There are numerous instances where industry codes form part of the legal framework, including other kinds of Privacy Codes,[31] codes approved by the ACMA in the context of telecommunications[32] and media,[33] and industry codes enforceable by ASIC[34].

As such, the remaining aspect of this question is which entity should develop the CR Code. This issue was considered by the 2021 CR Code Review. That review found that Arca is the appropriate body to develop the CR Code. It stated:

> ARCA has sufficient expertise in the credit reporting space and is appropriately resourced to undertake the code developer role. Further, no stakeholder was able to point to a more appropriate body to undertake the role of code developer during the Review process.
>
> Given ARCA's expertise and the OAIC's role in independently approving any variations to the CR Code, the Review considers that this appointment remains appropriate. We acknowledge that ARCA commits significant time and resources to developing variation applications, and regularly meets consultation requirements. The consultation requirements in the Guidelines for Developing Codes provide important safeguards to ensure that variations to the CR Code have undergone appropriate consultation with relevant stakeholders.[35]

We note that subsequent to the 2021 CR Code Review, the OAIC requested that Arca develop a further round of potential variations to the CR Code. Those variations are with the OAIC for their consideration.

PRDE and ACRDS – the RDEA's role

The Reciprocity and Data Exchange Administrator Ltd (RDEA) is the named 'PRDE Administrator Entity' under the PRDE. The RDEA performs the management activities under the PRDE, which includes:

- Explaining the purpose and operation of the PRDE to signatories and prospective signatories
- Onboarding new signatories
- Maintaining and distributing the register of signatories
- Setting and collecting signatory fees to fund the operation of the PRDE
- Administering the Monitoring, Reporting and Compliance framework
- Ensuring the terms and operation of this PRDE are subject to regular independent
- Updating the PRDE to improve its operation (whether in response to the Independent Review or otherwise).

Guidance to RDEA signatories

The RDEA is responsible for providing guidance to signatories on the operation of the PRDE; particularly through the onboarding of new signatories. The RDEA's experience has been that support has needed to be broadened to include guidance on credit provider's legal obligations under the Privacy Act, CR Code and the National Credit Act. This has been a necessary outcome of the complexity of both the legal framework and the credit providers' corporate/funding structures; it is not a result of complexity within the PRDE.

We have, due to our expertise in the credit reporting and credit laws, identified compliance issues with many prospective (and sometimes existing) signatories, relating to the credit provider's ability to participate in credit reporting at the 'comprehensive tier' (due to whether or not the are a 'licensee') and, even, their status as a 'credit provider' (under the Privacy Act).

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[31] See Part IIIB of the Privacy Act.
[32] See, e.g., the Register of telco industry codes and standards.
[33] See, e.g., the codes which apply to radio and TV broadcasters.
[34] See Div 2 of Pt 7.12 of the *Corporations Act 2001*.
[35] 2021 CR Code Review Final Report, at page 44.

To help assist prospective signatories and reduce the operational burden on the RDEA, we have produced information sheets (currently in final draft form) on two of the most common scenarios; debt buyer participation under the PRDE and complex lending structures (i.e. those that involve multiple separate entities under a securitisation structure). This guidance has taken a significant amount of time to produce and demonstrate the highly complicated nature of the intersection of the credit reporting and credit laws and industry practice.

Administering the monitoring, reporting and compliance framework

A significant part of the RDEA's role in respect of the PRDE is administering the Monitoring, Reporting and Compliance framework under Principle 5 of the PRDE. This principle is intended to be largely 'signatory-led' i.e. signatories are primarily responsible for monitoring their own compliance – and compliance of other signatories. Should non-compliance be identified or suspected, the non-compliant signatory is expected to make a 'self-report' of non-compliance with the RDEA, or another signatory *directly* raises an allegation of non-compliance with the relevant signatory (which, if resolved within the relevant timeframes would not be reported to the RDEA). The RDEA's role has been expanded over time, although the framework is still fundamentally signatory-led. The current independent review of the PRDE (see below) will examine whether this approach remains appropriate.

The RDEA's role includes facilitating an annual attestation of compliance from each signatory, along with the collection of data to support those attestations. The attestation process has also expanded over time. The RDEA uses the data collected to develop industry 'benchmarks' to support signatories understand how they compare to other signatories, and to help the RDEA identify potential issues of non-compliance which may be subject to follow-up work.

The PRDE Review

Principle 6 of the PRDE requires the industry code to be subject to independent review after 3 years (which has been completed) and every 5 years after that. The second such review is currently underway; and terms of reference have been approved. We are currently finalising the process to appoint the reviewer.

We expect the review to include a broad consideration of how the PRDE is working and the extent to which it is giving effect to its intended purpose, i.e. to facilitate a standardised, open and transparent system for the exchange of comprehensive credit information between CRBs and CPs.

The PRDE Review is likely to consider operational matters (such as how the compliance framework is functioning), as well as the underlying principles of the PRDE. The review may consider specific questions relevant to each principle, such as the 'reciprocity principle' (for example, are the current exemptions appropriate; should the requirement to contribute default information be clarified; should the principle include greater requirements on data quality and consistency) and the 'consistency principle' (for example, should it cover 'enquiry' date; should it require contribution to all signatory CRBs).

Noting that some of the issues considered through the PRDE review is review are likely to overlap with this statutory review, the independent review will also seek to understand stakeholders' views on whether changes should be made under the industry code or via regulation.

The ACRDS

Signatories to the PRDE are required to comply with the Australian Credit Reporting Data Standards (ACRDS). The ACRDS provides for consistency of data contribution by setting out the structure and technical requirements of the data that is contributed by the CP to the CRB. It defines common, standard events and how they should be handled, to enable CPs supplying data to multiple CRBs to do so based on a single data extract.

Under the PRDE, the RDEA is "required to maintain and manage the ACRDS and the Publication Timeframe". That is, it manages both the content of the data standard and when/how often the data standard is updated. Any changes to the data standard must be approved by the RDEA Board (also with

the Arca Board's consideration); there are clear, documented processes for assessing whether changes ought to be made and assessing the costs and benefits of any change proposals.

The RDEA's role in respect of the ACRDS is informed by the Data Standards work group, comprised of from signatories and Arca Members. This group discusses:

- What changes are required to the data standard (including in response to potential changes to the law, as well as shifts in consumer credit practices);
- operational matters related to the ACRDS (i.e. ensuring a common understanding amongst users, and discussion of implementation guidance); and
- the potential timing of new versions of the ACRDS (which, as a general principle, are released every two years to balance the desire to obtain the benefits of the new version and the costs of implementing the new version).

Version 4 of the ACRDS is currently being rolled out; noting the likelihood of changes resulting from this review, the RDEA has postponed the publishing of from April 2025 to April 2026, with potential for further postponement depending on the regulatory change process.

During the rolling-out of any new version of the ACRDS, the RDEA conducts 'verification testing' with each CRB. This involves the RDEA generating a portfolio of test data which is submitted to the three signatory CRBs (as though the RDEA was a CP). The RDEA reviews the response files against expectations under the ACRDS and shares its feedback with the CRBs for their consideration, with a focus on the changes brought in under the new version. The intent of verification testing is to:

- help CRBs have an initial round of 'CP'-style testing before they start testing with CPs;
- verify the steps CRBs are taking to implement the new version of the ACRDS;
- align expectations about what the ACRDS requires (including potentially identifying matters that need to be clarified in the ACRDS or further changes to the ACRDS which need to be made);
- make it easier for CPs to contribute data – including to multiple CRBs – by increasing alignment and consistency of interpretation and implementation of the ACRDS.

The appropriateness of the RDEA's role

As noted above, we consider that the RDEA's role in respect of the PRDE and ACRDS remains appropriate. We hold this view because:

- **The functions performed by the RDEA benefit CPs and CRBs**. These benefits are both direct (for instance, guidance about PRDE compliance and verification testing directly reduce costs and complexity for CPs, while the process for updating the PRDE and ACRDS ensures that beneficial changes to these regimes can be made in a timely manner with consideration of the cost and burden of any amendments) and indirect (the RDEA's efforts promote data consistency, meaning that CPs ultimately use more higher quality data and can make better credit decisions as a result).
- **There is no other entity with the breadth of skills needed to oversee the PRDE and ACRDS**. The RDEA requires significant industry, legal and technical skills to fulfil its roles in respect of the PRDE and ACRDS. It is difficult to identify another body that could do all of the following:
    - Provide onboarding support on multiple pieces of legislation administered by different regulators;
    - Monitor and oversee a signatory-led compliance process;
    - Conduct technical analysis on the form of data supply specified in the ACRDS, including verification testing with CRBs where the body effectively stands in the shoes of a CP;

Given the highly technical nature of credit reporting, it is important to the management of the PRDE and ACRDS that the RDEA can draw on Arca's expertise when appropriate.[36] Arca and the RDEA have invested heavily in the ACRDS in recent years, including improving the requirements and technical specifications of the ACRDS, the setting the timeline for version publication, establishing an ACRDS change management process, conducting 'verification testing', and the development guidance users to understand and operationalise the ACRDS. Given the breadth and complexity of this role, in the absence of the RDEA performing these functions, we believe that they would largely go unperformed.

- **Other jurisdictions are seeking to emulate aspects of the work done by the RDEA**. For example, in the UK there is no common data format (i.e. ACRDS equivalent), and information is generally shared with CRBs in different formats, giving rise to higher costs and inconsistencies. The FCA has recommended that the industry develop a common data standard.[37] This analysis highlights the importance of the industry-led aspects of the framework undertaken in Australia by the RDEA.

3.8 Can any improvements be made to the governance of industry-led codes and standards to ensure all relevant stakeholders are represented?

We consider the governance frameworks for industry-led codes and standards are working appropriately, and that no significant changes are needed.

The governance and oversight of different codes and standards reflects the role that those standards play in the wider framework for credit reporting. Further details about each, and the appropriateness of the current arrangements, are set out below.

CR Code

As outlined in our response to question 3.7 above, the CR Code is overseen by the OAIC. The Commissioner:

- chooses which entity should be approached to be the CR Code developer;
- outlines the matters to be addressed through any request to vary the CR Code;
- makes the decision on whether or not to approve any subsequent CR Code application.

The Commissioner also has reserve powers – for instance, if an application to make/vary a CR Code is declined, the Commissioner can itself act as Code developer.[38]

The Commissioner's role in respect of approving an application to make or vary a CR Code goes not only to substance, but also to the manner in which the Code was developed (e.g. the Code developer's process and consultation). The OAIC publishes guidance on its expectations in this regard: the **Guidelines for developing codes**.

The oversight of the CR Code process was considered in detail in the 2021 CR Code Review. That review found that Arca is the appropriate body to develop the CR Code – see our response to question 3.7 above.

As a result of the Review process, the OAIC enhanced its guidelines for developing codes to make clear that a CR Code developer should also consult early (i.e. at the issues identification stage). Arca strongly

[36] There are controls in place to ensure this happens appropriately. There is a services agreement between the Acra and the RDEA, a specific RDEA CEO, designated staff who are primarily responsible for overseeing the operation of the PRDE and ACRDS and separate boards subject to their own duties (i.e. RDEA directors must act in the interests of the RDEA, not Arca).
[37] Market Study MS19/1.3 *Credit Information Market Study Final Report* at pages 74-81.
[38] Privacy Act section 26R.

supports this enhancement, and used a two-stage consultation process when developing its most recent application to vary the CR Code (the **Arca 2023 CR Code application**).[39]

We support the views of the 2021 CR Code Review and the OAIC's enhanced guidelines for Code development. We also consider that the overall Governance of the CR Code is appropriate because:

- **Stakeholders have multiple opportunities for involvement and feedback – both on matters of substance and process:** In addition to the two rounds of consultation the CR Code developer is required to run, the OAIC also consults publicly on any application to vary that Code. The feedback sought includes both matters of substance (i.e. the policy settings), but also the process through which the CR Code developer produced the proposed variations. We note that this produces a three stage process – one which is unusually robust for delegated legislation and affords all stakeholders multiple opportunities for involvement.
- **the regulator is the final decision maker**: Having an independent party make decisions about the form the CR Code should take provides an important protection against perceptions that the CR Code is flawed or certain feedback not taken into account. Arca's experience has been that the OAIC can – and does – request amended applications if they consider that further/additional changes to the CR Code are warranted based on the feedback they've received.
- **There are protections in place:** The registered CR Code is a legislative instrument (i.e. delegated legislation). Policymakers have put in place protections on the use of delegated legislation, and those protections apply to the CR Code as well. For example, legislative instruments are disallowable in Parliament, can only be made with appropriate consultation and are subject to regular review.

PRDE and ACRDS

Issues about the governance of the PRDE were raised as the ACCC considered Arca's 2020 Reauthorisation Application. The ACCC's conclusion was as follows:

> 4.77. The ACCC considers that robust governance and compliance measures are critical to support the effective operation of the PRDE. The ACCC acknowledges the concerns expressed by Financial Rights and Legal Aid Queensland about the consultation process for the independent review of the PRDE, as well as a lack of consumer representation in its governance.
>
> 4.78. The ACCC acknowledges that the PRDE governs business-to-business data exchange, and a consumer representative may not be an appropriate person to hear a data compliance dispute between credit providers or credit reporting bodies. The ACCC also acknowledges that future consultation processes for variations to the Credit Reporting Code is an appropriate forum for dealing with consumer issues arising from comprehensive credit reporting, and particularly the anticipated introduction of financial hardship information. However, the purpose of the PRDE is to govern how consumers' comprehensive credit data is exchanged between credit providers and credit reporting bodies. Therefore, consumer advocates are relevant stakeholders in the operation of the PRDE and there is value in ARCA consulting with them about any future amendments.
>
> 4.79. The ACCC considers it would be appropriate for ARCA to continue to work closely with consumer advocates in appropriate forums, including its consumer education and guidance work and in any future reviews of the Credit Reporting Code. Acknowledging this history of engagement with consumer advocates and noting ARCA's public commitment to also consult in respect of future PRDE amendments that are likely to lead to broader consumer

[39] Arca 2023 CR Code Application. See the consultation statement at Part B of the application. The discussion of each issue in Part A the feedback Arca heard and how it was taken into account. We also note for completeness that we conducted a *three-stage* consultation process for the development of the proposed soft enquiries framework

> impacts that are not otherwise dealt with under the existing credit reporting framework, the ACCC does not consider it is necessary to require consultation as a condition of authorisation. The extent to which ARCA consults with the relevant consumer advocacy groups in developing any future amendments to the provisions of the PRDE will be taken into account by the ACCC in assessing any future application for re-authorisation.[40]

Arca agree with the findings of the ACCC that the current approach to governing the PRDE is appropriate. We also hold the same view about the ACRDS. We do not believe that other stakeholders, such as consumer representatives, would get significant value out of detailed involvement in the data standards for the reporting of credit information.

We also agree with the ACCC's findings that consultation with other stakeholders, such as consumer advocates, is important, particularly where there is the potential for any changes to have consumer impacts. The RDEA has taken this feedback on board. For example, the RDEA:

- consulted in detail with consumer advocates in relation to the exceptions in the PRDE relating to domestic abuse
- engaged with consumer advocates on a range of highly technical PRDE changes in 2023 – we did not consider that these changes would have any direct effects on consumers, but nonetheless considered that engagement and a briefing was appropriate.

We note the upcoming Independent Review of the PRDE (see our response to question 3.7) will consider the governance of the PRDE and the ACRDS, including the role and scope of external consultation. We consider that this is the most appropriate forum for matters around the governance of these codes and standards to be examined in detail. The ACCC will also examine these issues when the relevant provisions of the PRDE next require authorisation – including any implications for competition.

International context

For completeness, we acknowledge the FCA's proposed remedies in respect of the Steering Committee on Reciprocity (**SCOR**), the cross-industry forum through which the UK's Principles of Reciprocity were governed.[41] We have engaged with the FCA to consider the extent to which those remedies were relevant to Arca, the RDEA and the Australian context. Our strong view is that the Australian situation is different, and that the FCA's remedies do not need to be replicated here.

In reaching this view we note that:

- **The Australian arrangements involve significantly more legal infrastructure:** SCOR is a cross-industry forum (comprised of 3 CRBs and 8 trade associations) rather than a legal entity. By contrast, Arca and the RDEA are both legal entities, with clearly defined remits, roles and powers (including through the respective constitutions, and in documents such as the PRDE where there are enforcement provisions). There is also a significantly higher degree of oversight from e.g. the OAIC (in respect of the CR Code) and the ACCC (in the context of the PRDE, given those provisions require authorisation on competition grounds).
- **Arca and the RDEA have a much significantly wider membership/representation than SCOR**: Arca is comprised of over 50 members, including large CPs, smaller CPs such as mutual banks and fintech lenders, and CRBs. The broader base of PRDE signatories (115 as at 1 June 2024) are also involved in any changes to the PRDE or ARCDS. By comparison, SCOR was comprised of a small number of large, incumbent firms, with clear gaps identified in their membership/participation.
- **Arca has more nuanced approaches to decision-making, allowing the Australian system to evolve and respond to emerging issues**: The FCA noted that SCOR made decisions by

[40] ACCC decision on 2020 Reauthorisation Application.
[41] Market Study MS19/1.3 *Credit Information Market Study Final Report* at Chapter 4.

unanimous agreement, which is "burdensome and limits the group's ability to respond to emerging issues and to adapt to an evolving credit information landscape." By contrast, changes to the PRDE and ACRDS (or changed in Arca-led contexts, like potential variations to the CR Code) do not require all participants to agree, but are instead made on the basis of the interests of the membership/system as a whole. In the context of the ACRDS, there is a formalised change management process with principles for when changes should be made. This approach has ensured that aspects of the regime overseen by Arca and the RDEA have been able to respond to emerging issues. Examples include domestic abuse, where the RDEA was able to develop PRDE exemptions, and the proposed soft enquiries framework, where Arca was able to develop a framework for OAIC consideration even though there was significantly divergent views amongst stakeholders about what that framework should enable.

- **Arca/RDEA retain higher levels of support**: In the UK context, there was widespread support for replacing SCOR, even from the parties involves in that forum. By contrast, many of the arrangements overseen by Arca and the RDEA have strong support from Members and other stakeholders – indicative of governance that is working well.

4. Impact of the credit reporting framework

4.1 What evidence is available to demonstrate whether comprehensive credit reporting has met its policy objectives, such as:

- **improved lending decisions, including loan performance and suitability, risk-based pricing and access to credit;**
- **improved financial inclusion and access to finance in Australia;**
- **improved competition and efficiency in the lending market;**
- **reduced the cost of consumer credit?**

Based on the evidence available, Arca's view is that comprehensive credit reporting in Australia has met its policy objectives *in part*. We believe that further enhancements and modernisation of the credit reporting system – in many ways consistent with the general proposals Arca and other bodies put forward to the ALRC in 2007 – is needed to ensure that the system can more fully improve lending decisions and credit management, foster financial inclusion, promote competition and place downward pressure on the cost of credit.

An overview of the evidence we have available it outlined below. In many cases the actual data is commercially sensitive, and may need to be sought from the relevant firms directly. Additionally, we observe that the credit market has changed significantly since comprehensive credit reporting was first enabled in 2014 –it is not always fully possible to isolate the effect of credit reporting from other changes and market developments. Nonetheless, we are confident that the information and evidence available demonstrates the benefits that have been realised through comprehensive credit reporting (as well as the potential additional benefits available from enhancing the system in the way we have recommended).

Based on our Members feedback, comprehensive credit reporting has led to the following developments.

CPs are consuming and using comprehensive data

CRBs have produced products for their CP customers which provide structured summary versions of comprehensive data for easy use by CPs in the context of credit decisions. Correspondingly, CPs have consistently informed Arca that they have amended their lending strategies, and internal scoring models. This includes all aspects of comprehensive data – i.e. CPs are using CCLI, RHI and FHI in order to support their decision-making.

CRB Scores and CP Scorecards are significantly more powerful

CRBs have advised us that the predictive power of the credit scores they offer have increased very significantly with the inclusion of positive data. In particular, the inclusion of RHI greatly improves the ability for CRBs to distinguish between individuals where their negative information looks very similar, offering CPs more tailored, predictive scores that better reflect the actual level of credit risk. For example, in the table below:

- Individuals A and B will look very similar if only their negative-level data is considered, but positive level data indicates that Individual B is a significantly greater credit risk. In this regard CCLI and RHI provide additional context to allow CPs to determine which consumers are low risk (Individual A), as well as more context about those who repeatedly miss payments (Individual B)
- Similarly, Individuals C and D look very similar if only their negative-level data is considered – in particular the presence of the default information may make it difficult for either individual to obtain further credit. However, the positive level data highlights that Individual D has successfully maintained a mainstream credit product, which could provide useful context to a CP considering whether to lend (thereby reducing the risk that Individual D is not financially excluded)

Individual A	**Individual B**

Negative level data
 	
One enquiry for a credit card, no default information
 	
Positive level data
 	
CCLI for two credit products:
 	
• one home loan (> 5 years old, open),
• one credit card (3 years old, from the same CP as the enquiry, open)
 	
Consistent positive RHI on both products (i.e. all payments made on time)
	Negative level data
	
	One enquiry for a credit card, no default information
	
	Positive level data
	
	CCLI for three credit products:
	
	• one home loan (> 5 years old, open),
	• two credit cards:
	  ○ first card, 3 years old, from the same CP as the enquiry, closed 2 months ago
	  ○ second card, opened 11 months ago, no corresponding enquiry
	
	Positive RHI until 12 months ago. Since then:
	
	• consistently missed payments on first card, product was closed with outstanding amounts owing 2 months ago
	• second card has had three missed payments since it was opened
	• The most recent payment on the home loan was missed

Individual C	**Individual D**
Negative level data No enquiries Default information from 3 years ago Positive level data CCLI for one credit product, a personal loan, 4.5 years old, closed 18 months ago.	Negative level data No enquiries Default information from 3 years ago Positive level data CCLI for one credit product – a personal loan, 4.5 years old, open

Consistent negative RHI for that personal loan (i.e. closed with RHI = X).	Consistent positive RHI for that personal loan (i.e. all payments made on time)

Consistent with the example above, CPs have informed Arca that the predictive power of their scorecards has increased significantly due to the inclusion of comprehensive-level credit information. In particular:

- One large CP noted that RHI is the best predictor of creditworthiness that they have available
- One smaller CP noted that they have achieved a 20% increase in the GINI coefficient of their scorecard based on the totality of the information available – even a much smaller increase would be very significant.

Comprehensive credit reporting supports increases in approvals, promoting financial inclusion

The evidence from CPs is that the increase in data available has allowed them to increase the amount of loans they provide for a given bad debt/poor performance rate. This is an expected result of reducing the information asymmetry and addressing adverse selection, but has been borne out in practice based on material provided by CPs. For instance:

- One CP indicated that they were able to increase automatic approval rates by 14% across one product type with the same level of risk using the additional data. The evidence provided suggested that automatic approval rates increased further over time, and that automatic approval rates on a second product type increased 20%.
- Another CP noted that they were able to increase their approval rates materially without increasing their bad debt rates.
- One large CP indicated that they used this increased power to conduct better risk discrimination, and will increase approval rates or decrease bad debt rates depending on their risk appetite and the economic cycle at a given point in time.

One method through which this can occur is CPs using larger amounts of data beyond the scores provided by CRBs. Evidence from one CP indicates that this kind of segmentation (i.e. looking beyond the headline CRB score to the underlying information) can allow them to approve a subset of applications with scores that would previously have typically led to a decline.

CPs can better detect liabilities that consumers did not disclose in their application

Numerous CPs have informed Arca that the availability of CCLI helps them detect significantly more liabilities which individuals did not disclose in their applications for credit. This has been the experience of even very large CPs, who hold vast amounts of transaction data and who would otherwise be in the best position to detect undisclosed liabilities. The amount of undisclosed liabilities that CPs advised us they had detected varied based on the CP, the products they offered and the distribution channels they used, but:

- Most CPs who provided us with input noted that there were discrepancies with the liabilities that individuals disclosed on over 10% of the applications they received – in many cases materially more than 10%.
- Multiple CPs informed us that CCLI helps them detect both undisclosed liabilities (i.e. other products that the individual did not disclose – either accidentally or deliberately), and under-disclosed liabilities (i.e. where the limits on other products were understated).
- CPs noted that the presence of CCLI for detecting undisclosed liabilities means that fewer files required manual verification on this point – these differences were most stark where CCLI was available upfront as compared to channels where that was not possible. In one case this was a reduction from 30% of files needing manual liability verification to 5%.

The increase in the ability of CPs to detect undisclosed liabilities provides leads to better outcomes for individuals (i.e. individuals do not receive loans where their actual commitments suggest that further lending would be unsuitable) and reduces regulatory risk for the CPs as well.

Application processes are simpler and decisions are quicker:

CPs consistently noted that the availability of CCLI allows them to offer simpler, faster application processes to prospective customers. For example, reliance on CCLI to detect and/or verify liabilities can mean that CPs do not require other types of evidence which can be more costly and burdensome to obtain and analyse – a repeated example of information which is no longer necessary (or as necessary) is bank statements. This held true for both larger and smaller CPs. The potential process uplifts were generally larger for smaller CPs, as larger CPs have more significant transaction data they can draw on (although even very large CPs noticed an uplift). Additionally:

- One CP noted that they have been able to reduce the number of manual requests for information they need to make of applicants through reliance on credit reporting information
- Another (large) CP noted that their application completion rates have improved. A third CP noted that positive data helps to contextualise and explain negative information, making application processes simpler – for instance, if they can see enquiries but no CCLI (i.e. because their other CP only participates at the negative level), they may need to obtain further information from the individual to confirm the liability and repayment history.
- Multiple CPs noted that application processes were now simpler particularly for refinances, and that both RHI and CCLI simplify the data they require from individuals when considering those applications.

The simplification of application processes, reductions in manual verification and increases in automatic approvals mentioned above substantially reduce the time that CPs need to make a decision on applications they receive. Large and small CPs noted that comprehensive credit reporting enables them to make faster decisions. Of particular note:

- One small CP was able to reduce assessment times by 15 minutes per application
- One CP subject to the mandatory credit reporting regime indicated that median time to approval before that regime commenced was 4.9 days, and is now 1.9 days (although this includes the effect of other process improvements unrelated to comprehensive credit reporting)

Data is being used to support individuals and conduct tailored assessments

Numerous CPs indicated that they use comprehensive information to obtain a better understanding of an individual's behaviour and circumstances. In general terms, this is relevant in two situations:

- Where the individual is experiencing financial stress, and the information is used in the context of considering what hardship support is appropriate
- Where the individual has previously experienced hardship, and is now subsequently applying for credit

Alerts, customer support and hardship

Multiple CPs – including ADIs and non-banks, informed Arca that they use alert functionality (i.e. receive notifications from CRBs about individuals at significant risk of defaulting on their obligations). They indicated that these alerts, and credit reporting information more generally, allowed them to:

- Have earlier contact with individuals who are starting to experience financial difficulty, before they fall into arrears;
- Have better conversations, which impose less burden on individuals at a stressful time (i.e. they can rely on the credit reporting information to understand the individual's existing liabilities – further documents to that effect are not needed)

- Better understand the individual's circumstances, including what options (i.e. term extensions, switches to interest-only repayments) or hardship assistance might be appropriate

Nuanced, holistic assessment of previous hardship

CPs advised Arca that they are now substantially better able to identify individuals in hardship (or who have previously been in hardship), and ensure they fully understand their financial position. Consistent with our answer to question 5.4, CPs advised us that FHI is **not** a black mark, but that individuals with FHI may be manually assessed, and many receive further credit after this process.[42] In general terms, data provided suggested that where individuals with FHI were declined further credit, this was not because of the hardship assistance – for instance, the credit was unaffordable, the credit score was significantly below the CP's cutoffs, or there was other negative information that led to the decision to decline. As outlined in our answer to question 5.4, Arca is collating quantitative data about the effect of FHI and will provide this to the Review when it is ready.

Effect of comprehensive credit reporting and scope for future improvements

We consider that the evidence available suggests that comprehensive credit reporting has:

- **improved lending decisions:** in that CRB and CP tools, scores and scorecards are now substantially more predictive, application processes can be simpler and regulatory risk is reduced.
- **supported financial inclusion and access to finance**: for instance by providing substantial additional context to CPs and increasing approval rates. This includes both information about positive behaviour – which can contextualise or mitigate previous defaults or missed payments – but also by allowing CPs to identify and better understand the circumstances of those who have previously experienced hardship.
- **improved competition and efficiency in the lending market:** By mitigating information asymmetries (which affect some CPs more than others), allowing for simpler application and assessment processes.
- **put downward pressure on the cost of consumer credit:** by simplifying application and assessment processes, and through promoting competition, noting that smaller CPs have frequently experienced the most significant improvements to processes and simplifications, and have been able to therefore better compete (and in some cases conduct risk-based pricing).

We note that these benefits are roughly in line with expectations and the theoretical evidence presented to other reviews considering the potential effect of comprehensive credit reporting.

However, enhancement and modernisation of the credit reporting system would better allow the system to fulfil these policy objectives. For instance:

- adding additional data such as balance and richer details about repayments would further increase the predictiveness of scores and scorecards, allow CPs to better understand consumer behaviour (relevant to both new loan applications and support for consumers at risk of financial stress) – see our response to question 5.2 and Recommendations **6** and **7**;
- allowing more CPs to disclose and access RHI and FHI will substantially support financial inclusion, as well as allowing for greater competition (including for commercial-only lenders) and incentivise further participation which will in turn magnify the benefits of the credit reporting system – see our responses to questions 7.3 and 7.5 and **Recommendation 29**;
- changes to the credit ban system (including through the creation of a fraud flag) could reduce unintended friction (i.e. supporting better, simpler, faster decisions) and allow CPs to support their customers to avoid significant risks of default, all without reducing the protection available to individuals – see our response to question 6.4 and **Recommendation 22**; and

[42] Some CPs indicated that a proportion of individuals with FHI could be approved automatically, depending on the other information available.

- stricter regulatory requirements for credit repair firms would address poor conduct creating incentives for CPs to agree to unfounded correction requests, in turn reducing the quality and accuracy of the data within the system (and ensuring that poor conduct from credit repair firms does not deter smaller CPs from participating in the system): see **Recommendation 26**.

4.2 How do lenders mitigate against inappropriate bias in automated and algorithmic lending decisions using credit scores or other credit reporting information?

CPs are subject to obligations under anti-discrimination law frameworks to ensure that they do not discriminate against prospective customers. Attributes protected under the law include age, disability, race, gender, pregnancy, sexual orientation as well as marital or relationship status. In general terms, CPs have a range of measures in place to ensure that they comply with their legal obligations, including those protecting individuals from discrimination.

More generally, Arca notes that inappropriate biases in lending decisions are harmful to both CPs and individuals involved. It is in the interests of all parties that, as far as possible, bias is not present in CP decision-making. Inappropriate bias in lending decisions – such as credit being provided in situations where it is not appropriate to do so – would increase credit risk for CPs and expose individuals to financial harm. Similarly, inappropriate bias that means credit is not provided would reduce the CP's market share and risk financial exclusion for the relevant individual. CPs have measures in place to review their models for making decisions on credit applications to ensure that those decisions – and the models and measures they are based on – are robust and not treating cohorts of consumers unfairly.

CRBs also take steps to ensure their credit scores do not reflect inappropriate biases. This includes regularly testing their models[43] against actual performance to ensure that the models are not producing unfavourable outcomes for a particular cohort of individuals (i.e. ensuring that individuals with that attribute are not unfairly treated – relative to real-world, observable outcomes – under the model underpinning the score). As with CPs and individuals, inappropriate bias is not in the interests of CRBs, as the predictive power of their scores and data analytics are a significant part of their offering to their CP customers.

Finally, we note that the Privacy Act Review recommended additional protections and rights for individuals relating to automated decision making.[44] The Government agreed with proposals that:

- privacy policies should set out the types of personal information that will be used in substantially automated decisions which have a legal, or similarly significant effect on an individual's rights; and
- individuals should have a right to request meaningful information about how automated decisions with legal or similarly significant effect are made (noting that the information provided to individuals should be jargon-free, comprehensible and not reveal commercially sensitive information).[45]

The Privacy Act Review, and the Government's response, acknowledge other work which may affect mechanisms automated decision making.

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[43] Example testing includes correlation (identifying correlations between score segments and characteristics and protected attributes) and calibration (difference predicted log odds and actual log odds of one group against others defined by protected attributes). Running these testing models and setting outcomes at a low threshold – i.e. a low tolerance for any possible bias – is an effective means to pick up bias in score.

[44] Privacy Act Review Report (2022), Ch 19.

[45] Government Response | Privacy Act Review Report (2023), page 11.

Based on the measures and obligations outlined above, we are unaware of problems with the use of credit reporting information by CPs when making credit decisions that would justify additional measures to mitigate inappropriate bias.

4.3 What has been the impact of Australia's concentrated credit reporting industry on the price of credit enquiries, reliability of service, and innovation?

We agree with the observation in the Issues Paper that only a small number of CRBs generally operate in any given nation. This reflects the benefits from scale, network effects and cost reductions through standardisation that the Issues Paper has identified. The fact that Australia's credit reporting industry is (in the Issues Paper's words) concentrated is not unusual.

The topics raised in this question go to competition between CRBs. Competition between CRBs is considered when the ACCC considers whether to authorise certain provisions of the PRDE; authorisation is necessary as those PRDE provisions could potentially (without authorisation) breach the Competition and Consumer Act. One aspect of the PRDE which requires authorisation is the consistency principle: specifically, the requirement on CPs to contribute the same information to all CRBs with which they have a services agreement.

Arca most recently applied for reauthorisation of the PRDE provisions in 2020 (the **2020 Reauthorisation Application**). The ACCC granted authorisation for the relevant provisions for six years, until 31 December 2026. In its decision, the ACCC concluded that the consistency principle "is likely to promote competition between … credit reporting bodies – including, through increased innovation in service offerings from credit reporting bodies (for example, ongoing improvements in financial analytical services provided to credit providers)".[46]

In its evidence supporting the reauthorisation of the consistency principle, Arca provided evidence about competition between CRBs, including that:

- There has been a shift in competition between CRBs to focus on competition on products and services offered to their CP clients, and increasing innovation in the services offered;[47] and
- There is evidence that since comprehensive credit reporting commenced, there has been an increase in competition on price, with some CPs able to negotiate lower-price or total-fixed-fee arrangements for an unlimited number of enquiries (i.e. accesses to credit reports).[48]

Previous feedback from CPs has indicated to us that data received from CRBs is a critical part of their credit decisioning process. If significant issues with reliability of service were to occur, this would cause issues for those CPs – particularly those who only have a service agreement with a single CRB. Some CPs may be subject to obligations to have relationships with multiple CRBs, which could help to address concerns about the reliability of any one CRB. Additionally, to the extent that CRBs hold more consistent credit reporting information over time, service reliability may become a differentiating factor for CPs when choosing which services to acquire.

Finally, we do not believe that the existing mandatory credit reporting regime in the National Credit Act is "limited" to existing CRBs or acts as a barrier to entry. The intention of the regime is to ensure consistent information across CRBs where there is a degree of comfort that the information would be kept

[46] ACCC decision on 2020 Reauthorisation Application at paragraph 4.54.
[47] See paragraphs 138-143 of Arca's 2020 Reauthorisation Application.
[48] See paragraph 144-145 of Arca's 2020 Reauthorisation Application.

confidential and secure.[49] The regime also expressly contemplates application to CRBs identified in the future.[50]

4.4 Does the current regulatory framework provide sufficient incentives for innovation and competition in the CRB industry, including new entrants?

We note our response to question 4.3, including that these issues are considered by the ACCC when they authorise the PRDE, and that they have observed that the current arrangements are likely to promote competition. The evidence Arca provided in the 2020 Reauthorisation Application highlights that innovation is occurring in the CRB industry. Elsewhere in their decision on the 2020 Reauthorisation Application, the ACCC noted that at that time comprehensive credit reporting was "still in relatively early stages of implementation across the entire sector" and that "outcomes were likely to continue to improve" over time.[51] We believe the same is true for the competition and innovation benefits of CCR; we expect that further innovation will continue to occur.

Measures to incentivise participation and increase the volume and consistency of data within the credit reporting system – as suggested in this submission – would also be consistent with incentivising competition and innovation amongst CRBs.

4.5 Should CRBs be required to share some or all of their data sets with the other CRBs to promote competition?

We observe that this proposed solution – requiring CRBs to share datasets with their competitors – appears to have been mentioned by the Review because it could:

- **Increase competition between CRBs** (i.e. on the basis that reducing differences in the datasets helps to promote competition on other matters, such as price, product and service offering, and also that increased data held by CRBs should allow those entities to refine their data matching capabilities and improve the quality of the services they provide to CPs)
- **Reduce barriers to entry** (i.e. on the basis that the absence of existing data would make it extremely difficult for a new entrant to compete against existing CRBs).

It is unclear to us whether CRB data sharing would achieve either of these goals. It is worth noting that there are other potential options for achieving these goals, including e.g. CPs supplying information to multiple CRBs. Arca considers that substantial further work would be needed, including about whether any ongoing costs and challenges of a CRB data sharing model would outweigh the benefits. Work to consider these issues should focus on the policy problems sought to be solved, and include a wide range of potential solutions (i.e. beyond just an option related to CRB data sharing). Further information on the potential options and issues to consider is set out below.

Detailed consultation and analysis will be needed to determine the best way to solve these policy problems; as such this could be an appropriate topic for a targeted piece of work following the Review.

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[49] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraphs 1.144 to 1.147.

[50] Eligible CRBs can be to be defined in the regulations: see s133CN(2)(b) of the National Credit Act. No such regulations have been made. In our view the conditions permitted by s133CN(2)(b) could allow for new eligible CRBs to be described for the original eligible credit providers to whom the mandatory regime applied.

[51] ACCC decision on 2020 Reauthorisation Application at paragraph 4.44.

In respect of some of the issues to which this question might be intended to solve, Arca **supports** greater consistency in the datasets held by CRBs. We consider that more consistent data would have a range of positive benefits for CRBs, CPs and individuals:[52]

- **CRBs:** Greater consistency in data across CRBs would further focus competitive pressure between CRBs on service offerings and price rather than volume of data available (with flow on benefits for CPs and ultimately consumers). Additionally, such an outcome is consistent with CRBs having more data available to refine their data matching capabilities and products – a key aspect of quality of service offerings[53] (again, with flow on benefits to others in the system).
- **CPs:** CPs benefit from the increased competition mentioned above, as new products may improve the decisions they make (and the terms on which they are able to provide credit). Additionally, more consistent data will increase CPs' confidence that they will receive all the relevant information about an individual regardless of which CRB they choose to request information from.
- **Individuals:** Greater consistency in data held by CRBs should reduce the effort needed by consumers to obtain all of the credit information from CRBs. At present, not all consumers may fully appreciate that not every CP discloses data to every CRB. Gaps in datasets held by CRBs can also have implications for other aspects of credit reports that consumers may receive (e.g. the credit score / band on the report), and inconsistencies could lead to confusion. More consistent data across CRBs mitigates these issues (in addition to providing indirect benefits around availability and price of credit as a result of the matters above).

In general terms, greater consistency in the data held by CRBs would lead to reduced information asymmetry, giving CPs and individuals confidence that they are receiving a complete picture from whichever CRB they choose to request information from.

Arca observes that there are a range of different options and methods available for achieving this outcome, including requirements on CRBs to share information and/or requirements on CPs to enter into arrangements with multiple CRBs. Any option would need to consider – and solve – the following problems:

- **How the process would work**: At a high level, this means identifying the most effective way to ensure CP data is loaded accurately and consistently with each CRB. However, there are also significant number of complex questions about practical operation that need to be solved: e.g. how to information flows work in the context of corrections, updates or errors, under what circumstances is it permissible for CPs not to have a relationship with a CRB, what data should be shared, when and how is any data sharing obligation triggered, etc.
- **What the ongoing cost implications for different kinds of participants would be in practice:** At first glance it may appear that whichever party is subject to an obligation to pass on information to a CRB will be subject to additional costs. However, the cost implications in practice are more complicated, and will need to be fully considered through any cost/benefit analysis. For instance, if there were a CRB data sharing requirement, CPs would likely provide data to one CRB that then shares that information with other CRBs (ultimate recipient CRBs). That shared data may not always load successfully with the ultimate recipient CRBs, and CPs will incur costs dealing with these issues irrespective of whether they have a direct relationship with the CRB or not.
- **What cost mitigation measures are possible, including for smaller participants:** Feedback from CPs indicates that different/varying responses to CRB failures to load information is a source of cost and complexity associated with supplying credit information to more than one CRB.

[52] We note that these types of benefits were also identified by the Financial Conduct Authority (UK) in their credit information market study in the context of remedies around mandatory supply of data: see Market Study MS19/1.3 *Credit Information Market Study Final Report* at pages 40-41. Requiring CPs to supply certain data elements to each CRB is one way to ensure data consistency – albeit a method with limited flexibility and with cost implications.

[53] See paragraphs 141 to 143 of Arca's 2020 Reauthorisation Application.

Feedback from CRBs notes that there can be limitations about existing systems that makes full standardisation difficult to achieve. Any work considering consistency of data across CRBs should explore this issue in consultation/partnership with industry to determine how the costs of any options could be mitigated. Arca is currently working with CRBs on responses to failures to load, and is actively considering whether further measures that would help CPs are achievable. A work-group of CRBs and CPs has been established to explore this issue further. Additionally:

- The consideration of costs should also consider whether any additional measures would help mitigate costs for smaller participants (to ensure the competitive benefits of any reforms are not diluted); and
- A further relevant factor to consideration of cost mitigants is the extent to which broader changes to the system may affect any cost / benefit analysis, and the extent to which bundling changes to occur simultaneously can mitigate overall costs.

Recommendation 2

The Review should recommend that a further, targeted piece of work be undertaken to consider what measures should be explored to increase consistency of the datasets held by CRBs. The work should focus on identifying what model or models of solutions are most feasible, and how any cost implications can be properly addressed. Given the nature of the input needed to understand the implications for CPs and CRBs, the work should take place in close consultation with industry.

4.6 Are the PRDE reciprocity arrangements supporting competition and innovation?

The ACCC conducts a detailed assessment of the benefits that flow from the PRDE reciprocity arrangements through the PRDE authorisation process. They also consider any detriment associated with those arrangements – including around costs.

As part of that assessment, the ACCC reached the following view about the reciprocity arrangements:

> Compared to a situation without the PRDE, by addressing the free rider concern, the ACCC considers that the reciprocity provisions contained in the PRDE (together with the enforcement provisions) are likely to lead to a more fulsome exchange of comprehensive credit information between credit providers and credit reporting bodies, resulting in the following public benefits:
>
> - improved lending and risk management decisions by signatory credit providers, with associated time and cost efficiencies, as a result of the availability of better information to assess credit risk. This is likely to lead to consequential benefits for borrowers, in terms of increased financial inclusion and less over-indebtedness, and
> - the promotion of competition between smaller and larger credit providers, potentially lowering barriers to entry and expansion in the market, particularly for small credit providers. This may lead to improved availability and pricing of credit for consumers.[54]

These findings indicate that the reciprocity provisions are supporting:

- competition in consumer credit (i.e. between credit providers, as the amount of credit information available for decisions is greatly increased, reducing information asymmetries)
- innovation by CPs (i.e. the additional information available supports credit providers to design products and services which may not otherwise be available)
- innovation by CRBs (e.g. because the greater volume of information available allows CRBs to refine their data matching abilities and offer new/refined products/services to CP clients based on the richer dataset they hold)

[54] ACCC decision on 2020 Reauthorisation Application at paragraph 4.45.

As noted above, other aspects of the PRDE – such as the consistency provisions – also support competition between, and innovation by CRBs.

In respect of the potential issues around cost noted in the Issues Paper, the ACCC concluded in their decision on the 2020 Reauthorisation Application that "it would appear that the PRDE has not given rise to excessive additional costs for signatories over what they would have incurred moving to comprehensive credit reporting without the PRDE."[55] and that they received "no evidence … that the PRDE resulted in excessive additional compliance and costs for signatories."[56] Also, as acknowledged in the Arca's 2020 Reauthorisation Application, participation in the PRDE remains voluntary.[57] The fact that the public benefits of the PRDE provisions (including benefits resulting from the reciprocity provisions which address the free-rider problem) outweigh the public detriments was the critical factor behind the ACCC's decision to authorise the relevant parts of the PRDE.

The PRDE is subject periodic review (the first after 3 years and then every 5 years). The second such review is underway with the RDEA, at the time of finalising this submission, about to formally appoint the reviewer. We expect that that review will consider whether the PRDE is giving effect to its fundamental principles, notably 'reciprocity' (CPs receiving out of the system the same level of information that is contributed) and 'consistency' (supplying the same information to all CRBs with which the CP has a 'services agreement').

5. Credit data

5.1 How should credit reporting data definitions be established and administered to allow evolution and modernisation over time?

We agree with the observation in the Issues Paper that "detailed prescription of data definitions within legislation does not afford flexibility to cater to innovation and market and community developments over time". This has been our repeated experience with definitions set out in detail in the Privacy Act and Privacy Regulation – issues have arisen with the text of those definitions that means they do not work properly and/or do not cater to complex arrangements, innovations or market developments. It is important to note that these issues do not solely affect data definitions. Examples of definitions that have been subject to such ambiguity or other issues include:

- The definition of credit provider
- The definition of licensee (in the context of the restrictions around RHI and FHI)
- The definition of credit reporting body- see our response to questions 8.3 and 8.4.
- The definitions that comprise CCLI – see our response to question 5.3
- The definition of default information – see our response to question 5.3

These issues can reduce the amount, quality and consistency of data in the credit reporting system (i.e. because useful data cannot be reported due to definitional issues, and/or because participants take different views of the meaning/effect of an unclear or inappropriate definition in the Privacy Act). As such, the operation of the credit reporting system – and its ability to meet its policy objectives – is impacted.

Under the current framework, where such issues arise the only solution is law reform: this places an undue burden on Government to continually update the primary legislation. Past experience, with numerous other Government priorities requiring legislative attention and limited opportunities to review the credit reporting framework in detail, suggests that this model limits the ability of the credit reporting system to operate properly and evolve in line with developments in the credit market.

[55] ACCC decision on 2020 Reauthorisation Application at paragraph 4.102.
[56] ACCC decision on 2020 Reauthorisation Application at paragraph 4.133.
[57] See paragraphs 231-234 of Arca's 2020 Reauthorisation Application.

We contrast this experience to that with definitions that are set out in detail in the CR Code. The regular review process for the CR Code provides more frequent opportunities to update definitions that are not working properly or have become outdated.[58] The responsibility for the CR Code rests with the OAIC and the code developer (Arca), meaning that updates can be developed without requiring Government to prioritise the issue. Examples of definitions of various types of credit information in the CR Code that have been updated – or where updates are currently under consideration by the OAIC – include:

Responding to inflexible definitions – suggested approach

Arca's view is that wherever possible, detailed definitions should be placed in the CR Code (a form of delegated legislation) to allow for those definitions to be more easily reviewed and updated over time. The categories of credit information would likely need to be retained in primary legislation – so that the ultimate scope of the regime is sufficiently clear – but wherever possible technical detail of the meanings of those categories should be in the CR Code. Based on our experience to date, such an approach would mean new and emerging issues with definitions could be addressed in a timely manner, supporting the operation and evolution of the credit reporting system.

CR Code definitions provide the degree of certainty needed to ensure consistent practices by CPs reporting information: Arca contends that a clear definition in the CR Code better supports standardisation and common understanding of concepts that an unclear, ambiguous or outdated definition in the primary legislation.

We note that this model – where the detail of provisions is not within the primary legislation – is broadly consistent with the Australian Law Reform Commission's proposals for the financial services legislative framework[59] and generally accepted law design principles.[60]

Examples of definitions where the detail could be moved into the CR Code include the detail of what constitutes consumer credit liability information, default information, repayment history information and financial hardship information. The definition of credit information, credit provider and credit reporting body should be retained in the primary legislation.

As foundational material will need to remain in the primary legislation, this model should be supported by more regular reviews of the primary legislation. Arca's view is that the ten years which have elapsed since Part IIIA of the Privacy Act was enacted is too long – issues with the legislation that emerged shortly after the regime's enactment have not been addressed. We consider that reviews every five to six years would provide a balance between ensuring the system is kept up-to-date and providing sufficient time for Government to respond to and address each Review's recommendations.[61]

Additionally, providing the regulator with a power to make modifications to the provisions of the Act, and to exempt persons from its operation, would allow for more timely resolution of minor issues with the primary legislation. Such instruments are frequently used by other regulators, such as ASIC, to address unintended consequences, fix drafting errors, reflect developments/innovations and ensure that the regulatory framework is not unduly burdensome.[62] Such instruments should available for specific entities

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[58] The CR Code must be reviewed every four years: see paragraph 24.3 of the CR Code.

[59] Australian Law Reform Commission, Confronting Complexity: Reforming Corporations and Financial Services Legislation, Report No 141 (2023). While we consider there are significant key differences between the credit reporting and financial services frameworks – and consistency/common understanding of terminology is especially important in the credit reporting context – in this regard the general models are broadly similar.

[60] See, for instance, sections 6 and 7 of OPC's Guide to Reducing Complexity in Legislation, especially paragraphs 77 and 82.

[61] In forming this view we note that in 2008, the ALRC considered that the framework they recommended should be reviewed after five years: see Recommendation 54-8 in Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) Ch 54.

[62] For instance:

or products, or classes of entities or products; where the instruments apply to a class of people or products, they should be legislative instruments (subject to additional protections including consultation obligations, sunsetting and potential disallowance).

Recommendation 3

Where possible, detailed definitions of different types of credit information should be moved from the primary legislation into the CR Code, to allow for those definitions to be modernised over time.

Recommendation 4

The OAIC, as the agency responsible for administering Part IIIA of the Privacy Act, should have powers to:

- **provide exemptions from the provisions of the Part (for a person, a product, a class of persons or a class of products)**
- **modify how the provisions of the Part apply to a person, a product, a class of persons or a class of products.**

Instruments that apply to a class of persons should be legislative instruments; other instruments should be notifiable instruments.

Recommendation 5

The law governing credit reporting should be subject to a formal review process every 5-6 years. Sufficient time should be made available for each review, and each review should involve a multiple-stage consultation process so that stakeholders have the opportunity to identify issues and provide feedback on possible/proposed outcomes.

5.2 What other types of credit-related information should be reported, or excluded, as part of Australia's credit reporting framework?

There is scope to refine the information which can be disclosed, collected and used within the credit reporting system. We believe that this is a particularly significant issue – and would encourage the Review to treat this topic as a matter of focus.

In general terms, evidence, international experience and known issues with the current framework support adding a small number of additional fields to the credit reporting system, including:

- Data about current balances – a piece of information which is commonly included in credit reporting systems overseas and which has been shown to add significant predictive value;
- Richer information about repayments; and
- Further optional information about brands associated with the credit, to cater to complex models and reduce consumer confusion

We are conscious of the effect of the credit reporting system on individuals' privacy. For that reason, information which is of limited or marginal use should be identified for potential removal from the credit reporting system – credit reporting will be best able to achieve its policy objectives and place sufficient weight on the privacy of individuals if it contains the right information, not just more information. To that

- ASIC Class Order [CO 14/1262] in part reflected other developments with the regulatory treatment of banking products;
- ASIC Class Order [CO 10/1230] and ASIC Credit (Electronic Precontractual Disclosure) Instrument 2020/835 addressed drafting errors within the precontractual disclosure obligations under the National Credit Act; and
- ASIC Corporations (Basic Deposit and General Insurance Product Distribution) Instrument 2015/682 simplifies the regime for appointing representatives to distribute certain financial products.

end, as part of a wider change agenda, we have sought to identify some data elements which could potentially be removed. Separately we have also identified the potential for the retention period for enquiries to be reduced: see question 5.7.

Additional data

Balance

Arca considers that information about balance would significantly improve the operation of the credit reporting system, and its ability to support individuals and CPs. The reasons for this view are set out below.

There is substantial international experience and other research available that demonstrates that balance makes CRB scores and CP scorecards significantly more predictive, meaning that they can better predict credit risk and that, as a result, CPs can make better credit decisions. This reflects the fact that the amount owing is likely a better reflection of the financial capacity (or risk of overextension) of the individual at that point in time than e.g. a limit, where either a proportion of the limit has already been repaid or (in the case of e.g. a continuing credit contract) has not been used. In particular, we observe:

- Research conducted on Arca's initiative in 2007 for the ALRC indicated that adding information about the outstanding balance, would provide over one quarter of the total predictive value of fully comprehensive credit reporting – i.e. a greater uplift than that obtained from information about repayments or CCLI.[63]
- Evidence from the United States, where FICO scores contain information about balance outstanding, indicates that the amount owed (i.e. the balance outstanding) contributes 30% of the overall score.[64]
- One CRB had conducted analysis of the effect of balance in six jurisdictions where that information is available for credit reporting bodies. Although the exact results vary between jurisdictions, the analysis indicates that balance provides 40% or more of the total predictive power of the top 20 data elements that contribute to the credit score. The CRB observed that balance is often the most significant contributing factor to a credit score for individuals who consistently make repayments on time (i.e. it provides the most predictive power to the credit score in those circumstances).
- Other review processes have acknowledged in general terms that additional data would improve the operation of the credit system, including the FSI,[65] as well as the Productivity Commission, which stated "On balance, there appears to be little doubt that additional sources of information have the potential to be valuable, and could lead to better outcomes for some consumers".[66]

In general terms, the addition of balance to the credit reporting system would:

- **Allow CPs to better understand the individual's situation**, and therefore make better decisions. For example, the three hypothetical individuals in the table below. With the current credit reporting system they would look the same, however, inclusion of balance and more

[63] See the table between paragraphs 55.126 and 55.127 of Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008). The third substantive row of the table – "ALRC + account payment status" – broadly reflects the current Australian comprehensive system. The fourth substantive row of the table – "ALRC + account payment status + repayment history" includes all of those data elements as well as the value, number and dates of repayments. The fifth substantive row of the table – "Full" effectively represents the fourth line plus balance.

[64] See What is Amounts Owed, on the myFICO website.

[65] Financial System Inquiry: Final Report (2014) pages 190-192. We draw particular attention to the publications quoted at footnotes 106 and 107 on page 191.

[66] Productivity Commission, *Data Availability and Use*, Report No 82 (2017), page 558. The Productivity Commission declined to consider further reforms at that stage as the system was relatively new and had not been reviewed; those matters have both now changed.

detailed information about repayments (see **Recommendation 7**) could reveal substantial differences.

Individual A	Individual B	Individual C
Positive level data	Positive level data	Positive level data
One credit card, open, $7500 limit, no missed payments	One credit card, open, $7500 limit, no missed payments	One credit card, open, $7500 limit, no missed payments
Balance	Balance	Balance
Balance over the previous 6 months steady (i.e. all amounts between $1000 and $1500)	Balance over the previous 6 months close to the contractual limit (i.e. all amounts between $6500 and $7500)	Balance amounts over the rising sharply over last 6 months (from $1500 6 months ago to $7200)
Detailed info about repayments	Detailed info about repayments	Detailed info about repayments
Repayments closely align with balance owing (i.e. balance paid in full each month)	Repayments of close to the contractual minimum (i.e. ~3% of amount owing)	Repayments have dropped sharply, and are now close to the contractual minimum

For example, Individual A appears to only be using part of their credit limit and regularly paying off the amount owing every month. While the whole limit remains critical for e.g. responsible lending purposes, this lower level of utilisation is different from Individual B, who is significantly stretched with their current facility. Greater data can also highlight sudden changes, such as increases in balance and decreases in repayments (e.g. for Individual C) which could suggest a change in circumstances that would increase risk associated with further credit or potentially necessitate support from the CP in the near future.

- **Allow the credit reporting system to better realise its policy objectives**, which should lead to e.g. reduced loss rates, lower priced credit for low risk consumers, increased competition and financial inclusion. In general terms, based on international experience, the types of benefits and evidence outlined in our responses in questions 3.1 and 4.1 would be enhanced by adding this valuable datapoint.
- **Align Australia's system with comparable overseas jurisdictions**, such as the United Kingdom, the United States of America, Canada, Japan, India, Hong Kong, Spain, Singapore, South Africa and Italy, all of which have balance available in some form.

We consider that monthly balances should be available for a period of time, potentially two years, to allow for utilisation rates (i.e. balances in comparison to limits) to be calculated – CRB experience suggests that this is a powerful predictive metric.[67] Balance should only be available to CPs participating at the comprehensive level.

Recommendation 6

The monthly outstanding balance of the consumer credit should be defined as a new type of credit information. The retention period for the information should be 2 years, and the information should only be available to CPs participating in comprehensive credit reporting.

Additional information about repayments

At present, the only information about repayments reported as RHI are codes relating to the age of the oldest outstanding payment. For each month, that RHI takes one of the following forms:

[67] See also What is Amounts Owed, on the myFICO website.

- information that the individual is current/up to date for a given month or has met their obligations under a temporary FHA (often expressed on a credit report as "0" or with a symbol like a tick)
- a code about the age of the oldest outstanding payment, ranging from "1" (meaning that payment is 15-29 days overdue, or is overdue under a temporary FHA) through to "6" (150-179 days overdue) and "X" (meaning 180 days or more overdue).

This form of RHI was considered in detail by the ALRC in 2008, and generally reflects a partial implementation of the model put forward by Arca at that time.[68] Importantly, at that time:

- research conducted on Arca's initiative indicated that adding additional detail about repayment history, such as the value, number and dates of repayment, would provide almost one-fifth of the total predictive value of fully comprehensive credit reporting – almost as much of an increase as adding RHI codes or CCLI.[69]
- Arca noted that the position it put forward would "facilitate a gradual process of implementation". Other industry stakeholders indicated that it was a compromise or interim position (ahead of further future expansions), was the most compromised version possible without "fatally decreasing the predictive power of comprehensive information", or did not go far enough.[70]

Arca considers that the available RHI should be expanded to include:

- The payments due during the monthly reporting period (expressed as an aggregate dollar figure)
- The payments made during the monthly reporting (expressed as an aggregate dollar figure)

In making this suggestion we note that:

- **Extensive research and evidence indicates that this extra information will improve the predictive power of the credit reporting system**, reducing information asymmetries, allowing CPs to make better decisions and ensuring individuals who make e.g. greater than minimum repayments benefit from their behaviour. In addition to the research Arca initiated for the ALRC, other reviews such as the Productivity Commission's enquiry into data availability and use have noted that additional data could be valuable and lead to better outcomes for some consumers.[71]
- **This additional information (or similar information) is available in numerous overseas jurisdictions**, including Singapore,[72] the United Kingdom,[73] Hong Kong,[74] Canada,[75] the United States of America and Japan.[76]
- **Information would help CPs identify consumer harm:** Regulators have acknowledged that repeated low payments – such as repeatedly paying the minimum amount owing on a credit card – can be a source of harm for consumers.[77] Greater information available about payments made

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[68] See Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) at paragraphs 55.121-55.132.

[69] See the table between paragraphs 55.126 and 55.127 of Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008). The third row of the table – "ALRC + account payment status" – broadly reflects the current Australian comprehensive system. The fourth row of the table – "ALRC + account payment status + repayment history" includes all of those data elements as well as the value, number and dates of repayments.

[70] These positions are quoted in Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) at paragraphs 55.123 and 55.130-132. The footnotes to those paragraphs attribute the views to various CPs and CRBs. The second quoted phrase refers to the submission by Veda Advantage (now Equifax).

[71] See Productivity Commission, *Data Availability and Use*, Report No 82 (2017), especially page 558

[72] See the aggregated monthly instalments data on the Credit Bureau Singapore Credit Report Explanation.

[73] See this leaflet by Transunion, particularly aspects of the SHARE and MODA databases.

[74] See Item (B) in Schedule 2 to the Code of Practice on Consumer Credit Data.

[75] Some additional information about periodic repayment amounts is available in Canada: see Understanding your Credit Report and Credit Score at page 24.

[76] See the Credit Information Center's Guide on How to Read Your Credit Report.

[77] See, e.g. ASIC *REP 580* where repeated low repayments were identified as a type of problematic debt. Similar analysis was undertaken in the UK by the Financial Conduct Authority in the Credit Card Market Study.

would better allow CPs to understand the individual's behaviour and the potential for further harm associated with their repayment practices and/or providing further credit.

- **Information would help CPs meet the expectations of regulators.** For example, ASIC generally expects CPs to use data to identify and support individuals who are at risk of experiencing financial hardship.[78] Greater information about repayments made – including visibility of changes in behaviour over time – will help CPs to support their customers and meet the expectations of regulators.

Recommendation 7

Repayment History Information should include:

- **The payments due during the monthly reporting period (expressed as an aggregate dollar figure)**
- **The payments made during the monthly reporting (expressed as an aggregate dollar figure)**

The Review should consider the extent to which information such as this is consistent with the definition of repayment history information in the Privacy Act, and whether e.g. such changes could occur through the CR Code.

Brand

Consumer credit liability information includes the name of the credit provider. However, there are numerous instances where the name of the entity that has provided the credit will not align with the name the individual associates with their product. This includes:

- **CPs that run a multi-brand strategy** – this has become more common in recent years due to existing brands being retained in some form after mergers between ADIs
- **White labelling arrangements** – for example, it is not uncommon for one CP to distribute and manage credit card products where the actual credit provider (whose name is likely reflected in the CCLI) is another CP.
- **Complex arrangements** – such as where an agent performs an information request on behalf of a CP, where the CP does not have an Australian credit licence (so the licence-holder needs to be the PRDE signatory and their name is required to be the one supplied), or credit provided through other complex models such as special purpose funding vehicles.

In general terms, CCLI that only includes the name of a CP that the individual is unlikely to recognise increases the risk of consumer confusion and correction requests. Additionally, there has been concern about the existent to which the current CCLI definition caters to complex models (i.e. which entity is actually the credit provider) – the availability of an additional field, which reflects the credit provider branding associated with the product, could help address these concerns.

As such, we consider the definition of CCLI should be expanded to include "the credit provider brand associated with the consumer credit". This inclusion would:

- **Reflect real-world operations and developments since comprehensive credit reporting was established** – especially that CPs can have multiple brands or complex lending structures, such that the legal name differs from any associated with the relevant credit;
- **Align with other regimes** which can contain some tailoring to complex models[79] – a brand field is a simple form of tailoring; and

[78] See ASIC *REP 782* (REP 782) at pages 43-44 and ASIC REP 580 at paragraphs 54-56 and 166-191.

[79] For example, the application of the National Credit Act is modified for special purpose funding entities – see regulation 25G and Schedule 3 to the National Credit Regulations.

- **Reduce the risk of consumer confusion**, thereby improving the interpretability and accessibility of credit information for individuals.

In implementing such a change, the ACRDS could ensure that the data only needs to be provided where relevant (i.e. if the relevant branding and the credit provider's legal name align, there may be no need to disclose this information).

Recommendation 8

The definition of CCLI should be amended to include the credit provider brand associated with the consumer credit. Any further specificity which is required could be provided under the CR Code.

Potentially redundant data

There are some types of credit reporting information which we consider may be redundant, or could be removed from the system if other enhancements are made. It is important that the credit reporting system contain the *right* data – datasets which are not used, raise issues or have limited value should be removed, as their inclusion has an effect on the privacy of individuals and their confidence in the credit reporting system.

New arrangement information

New arrangement information about an individual is a statement that the terms and conditions of the original consumer credit have been varied, or that the individual has been provided with other consumer credit that relates to that amount of credit (either wholly or in part).[80]

New arrangement information is largely redundant,[81] for the following reasons:

- It is technically complex to report new arrangement information, given it will not 'match' default information reported, and is only retained two years from disclosure of default information. In circumstances where there is a gap between disclosure of the default information and formation of the new arrangement, this can mean the information is retained only for a short period, or not at all.
- The hardship reforms now provide other, more useful credit information about the variation of credit contracts.
- The 2021 CR Code Review, noted that very few CPs report new arrangement information. As flagged in Arca's submission to that review, the PRDE has been amended to remove new arrangement information as a contribution requirement. While signatories may continue to disclose this dataset, it is no longer a PRDE requirement that they do so.

Information about serious credit infringements (SCIs)

The Privacy Act allows a CRB to collect information about serious credit infringements (SCIs). A SCI is more serious than a default as it represents cases where an individual has fraudulently obtained credit, sought to fraudulently evade credit obligations, or no longer intends to comply with their credit obligations.

As a dataset, SCIs are largely redundant. The 2021 CR Code Review heard that SCIs are no longer being disclosed by CPs, with each CRB indicating that no SCIs had been disclosed for the previous 12 months.[82] One potential cause is the significant requirements that must be met before a SCI can be disclosed. Regardless of the cause, the intent of the inclusion of this information within the credit reporting system is not fulfilled.

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[80] See section 6S of the Privacy Act.
[81] See pages 72 and 73 of the 2021 CR Code Review Final Report, as well as page 27 of Arca's submission (Annexure A) to that review.
[82] See page 77 of the 2021 CR Code Review Final Report, as well as page 28 of Arca's submission (Annexure A) to that review.

Sex

Identification information about an individual includes an individual's sex.[83] Anti-discrimination legislation prevents CPs from using this information for to assess credit applications; the only relevant use of this information is for data matching purposes by CRBs.

We understand that multiple CRBs do not use information about an individual's sex for data-matching purposes. We also understand that at least one CRB uses it as a secondary source of information (i.e. after information like name, address and date of birth, to distinguish between similar files). We also understand that some CPs no longer ask for this information. The ACRDS requires information to be provided (i.e. it is currently a mandatory field). At present the options that CPs may select from when supplying information are:

- M – Male
- F – Female
- U – Unknown/Unspecified/Other

As fewer CPs collect this information, we expect to see more "U" responses over time, which will limit the potential useability of this information. Although it may be possible to update the fields under the ACRDS to better reflect gender diversity, given the limited use (and useability) of this information, it may be appropriate to consider whether information about sex/gender should be removed from the credit reporting system. This consideration should also encompass any flow-on implications, such as reduction in the ability to conduct analysis around the existence of gender bias.

Recommendation 9

The Review should consider the following:

- **Whether new arrangement information and information about serious credit infringements should be re as types of credit information under the Privacy Act; and**
- **Whether the individual's sex should remain as a type of identification information (and therefore credit information) under the Privacy Act.**

We note that any change in respect of new arrangement information would also require amendments to the National Credit Act, as new arrangement information is expressly part of the mandatory credit regime.[84]

5.3 Are the definitions of the different types of credit information detailed in Part II of the Privacy Act fit for purpose?

There are technical issues with many of the definitions in the Privacy Act – these issues are not limited to the definitions of the different types of credit information set out in Part II. In general terms, these issues reflect the complexity of the credit reporting system (and the law generally), as well as the lack of a previous Review to address these issues over the last decade.

We have set out some of the issues with various definitions, and recommended solutions, below. More generally, Arca's recommendations would allow for easier, timely resolution of such issues in the future through:

- a modification and exemption power for the regulator: see **Recommendation 4**;

[83] Paragraph (d) of the definition of identification information. Identification information is a type of credit information: s6N(a) of the Privacy Act.

[84] See paragraph 133CP(1)(g) of the National Credit Act.

- moving as much of the detail as possible to the CR Code (which is itself subject to regular reviews and where there is a track record of updates and refinements to definitions to make credit reporting work better): see **Recommendation 3**; and
- regular reviews of the law, so that a similar backlog of issues does not arise again: see **Recommendation 5**.

Collectively these solutions will allow for definitions to be kept up-to-date and fit for purpose, while also supporting the ongoing evolution of the credit system so that it reflects innovations and developments in the wider market.

Definition of default information: Section 6Q

Default information is a type of credit information about overdue payments. In order for information to be default information, it must meet the requirements of s6Q(1) of the Privacy Act. This includes the requirement that: 'the … [CP] is not prevented by a statute of limitations from recovering the amount of the overdue payment': see paragraph 6Q(1)(c).

The intention behind paragraph 6Q(1)(c) could be that information about overdue payments on statute-barred debts cannot be legally disclosed; Arca supports this intention. However, the effect of this restriction as drafted is that default information loses its status as default information once the relevant statute of limitations period has elapsed. When this occurs, the CRB would be prohibited from using or disclosing the information,[85] even though they have no way of knowing whether the statute of limitations period has expired. As such, CRBs are technically unable to comply with their obligations at present.

The 2021 CR Code Review suggested obligations on CRBs and CPs associated with removing default information about statute-barred debts. The purpose of those obligations was to prevent default information being listed late (e.g. soon before the limitations period expires), as late listing means evidence of the overdue payments affects the individual's ability to obtain further credit for substantially more than the five-year retention period (including when the debt could not be enforced). After consultation, Arca concluded that other approaches to addressing this issue would be preferable[86] – in part because of the difficulty of determining when statute of limitations periods have expired. Even the obligations proposed by the 2021 CR Code Review did not go so far as requiring CRBs to proactively remove default information about statute barred debts where it is not reasonable for them to know when the statue of limitations period has expired – which is the technical effect of the law as drafted.

Recommendation 10

The definition of default information should be amended to remove paragraph 6Q(1)(c).

Other amendments to the Privacy Act should be made to address the harm to individuals associated with default information being disclosed long after the relevant payment became overdue: see Recommendation 21.

Note: Recommendation 21 should address both the issues identified in the CR Code review, as well as the likely intention of paragraph 6Q(1)(c) to prevent CPs from disclosing default information once the relevant statute of limitations period has expired.

Other definitions outside Part II of the Privacy Act

Definition of CCLI for guarantors (paragraph (e) of the CCLI definition and regulation 6 of the Privacy Regulation)

[85] This is the effect of paragraph 5.1(a) of the CR Code.

[86] See pages 28 to 31 of Arca 2023 CR Code Application. We also note that pages 29 and 30 outline some of the challenges with determining when a statute of limitations period has expired.

Arca believes the legal basis for reporting CCLI in respect of a guarantee or guarantor is unclear. The reason for this view is:

- The initial words in the definition of CCLI in the Privacy Act are "if a credit provider provides consumer credit to an individual, the following information about the consumer credit is consumer credit liability information about the individual" (emphasis added). This phrasing indicates that the information is only CCLI in respect of the person provided with the credit, and not, say, a guarantor.
- Under paragraph (e) of the definition of CCLI, certain terms and conditions of the consumer credit specified in the regulations are CCLI. The relevant regulation for this purpose is regulation 6 of the Privacy Regulation.
- Subregulation 6(d) of the Privacy Regulation specifies the following term: "Whether the individual is a guarantor to another individual in relation to the other individual's credit."

Arca considers that the drafting of subregulation 6(d) is inconsistent with the initial words of the definition of CCLI, which provides that the information about the consumer credit is CCLI in respect of the person who received that credit. It does not provide for information about the consumer credit to be CCLI in respect of some other person, such as a guarantor. In this regard we respectfully disagree with the conclusion of the 2021 CR Code Review Final Report.[87] As such we believe it follows that the extent to which CCLI can actually be reported about a guarantee is ambiguous.

We note there are several potential options for the reporting of CCLI about guarantees. CPs could potentially be allowed/required to report:

- **No information about the guarantee at all** – potentially on the basis that any information about the guarantee isn't CCLI about the individual who has been provided with the credit.
- **That the guarantee exists** – this would be reported as CCLI in respect of the guarantor, but no further information (e.g. about the size of the guarantee or the nature of the credit guaranteed) would be available
- **The full range of CCLI about the credit in respect of the guarantor** – under this option, the same CCLI data would be reported for the individual who has entered the credit and the individual who has provided the guarantee; the capacity information would make clear the relationship between the guarantor and the credit. This option would make clear that the guarantor has given a guarantee over the credit, but not outline i.e. the extent of the guarantor's exposure
- **The full range of CCLI about the guarantee in respect of the guarantor**– under this option, the full range CCLI data could be reported for the guarantor, but could be tailored to that guarantee (i.e. if it is a partial guarantee, that should be reflected rather than the limit of the credit).

Arca considers that there is potential benefit associated with more information about guarantees being contained within the credit reporting system. Ready access to information about the existence and/or nature of guarantees would support CPs to ascertain and understand the guarantor's exposure under their pre-existing arrangements. As such, in addition to clarity, we support measures to ensure that information about guarantees and/or guarantors can form part of CCLI.

However, this area is complex, and detailed consideration would need to be given to the technical challenges of systematically reporting information and the views of other stakeholders (including regulators responsible for other obligations connected to consumer credit). As such, further work should be undertaken to determine the precise changes which should be made (including what types of

[87] See page 59 of the 2021 CR Code Review Final Report, where it is asserted that the "Privacy Regulation is clear on what CCLI should be disclosed on a guarantor's credit report", without addressing the inconsistency between the CCLI definition and subregulation 6(d).

information should form part of CCLI), to ensure that stakeholders views about the benefits of, and challenges in providing, information can be fully considered.

Recommendation 11

Amendments should be made to the Privacy Act (and/or the Privacy Regulation or CR Code) to clarify:

- **whether any information about guaranteed credit is CCLI about the individual who has provided the guarantee; and**
- **if so, the meaning of CCLI in the context of guarantees (i.e. what information is CCLI in respect of the guarantor, as distinct from CCLI in respect of the person provided with the credit).**

Any amendments should support information about guarantors and guarantees potentially being CCLI. The exact details of the amendments should reflect feedback from stakeholders about the benefit from, and challenges of, reporting such information.

Note: Arca has recommended that the definitions in the Privacy Regulation – including the prescribed types of CCLI – be incorporated in the CR Code – see Recommendation 1.

Meaning of some CCLI definitions once account terminated/ceased or entire liability accelerated

As noted above, the types of information that comprise CCLI are defined in section 6 of the Privacy Act and Regulation 6 of the Privacy Regulation, and include:

- the maximum amount of credit available under the contract (typically referred to as the 'credit limit'); and
- the terms and conditions specified in regulation 6 (e.g. whether the loan is principal and interest or interest-only, and whether the loan is secured or not).

The meaning of the types of CCLI listed above is clear when the account is open, but arguably ambiguous once the account has been closed. For example, there is an argument that, once the account has been closed:

- the credit limit is zero, as no further credit is available post-closure;
- the CCLI relating to terms and conditions also needs to be deleted or amended, as e.g. there is no method through which the principal and interest are to be repaid, as the credit is no longer secured even if it was when it was open.

Similarly, if the entire liability has been accelerated due to non-payment, the same argument suggests that the credit limit is also zero, as there is no further deferred debt which is available to the individual.

Arca sought input from the OAIC on the meaning of the CCLI items above in the context of closed accounts. The OAIC has advised us that while the definitions are unclear, they consider that the preferable interpretation is for credit limits to be set to zero when an account is closed. We believe it follows that where an entire liability is accelerated, the meaning of 'credit limit' is also ambiguous (and potentially zero). Both approaches would be inconsistent with existing practices of some CPs, particularly in relation to accounts where the entire liability has been accelerated, but the CP maintains an ongoing relationship with the individual.

Arca considers that such interpretations of the meaning of the CCLI definitions are inconsistent with the rest of the credit reporting system, where information is retained for a fixed period of time after events have occurred. Additionally, it is clear to all CPs that the account is closed because of the existence of

the 'date on which the account is terminated or otherwise ceases to be in force,'[88]such that a need to manually update credit limits to zero (especially where that does not reflect CP systems) may be unwarranted.

We consider that post-closure changes to CCLI beyond the reporting of the closure date can limit the effectiveness of the credit reporting system because:

- **the existence of the credit limit and/or terms and conditions helps to contextualise other information about the (now closed) credit account** – for instance the RHI for the closed account (which is retained without change) has less meaning if a CP cannot determine what the limit of the account was and whether repayments were to be made on an P&I or interest-only basis.
- **Zero limits for accelerated liabilities would be detrimental for other CPs** – who would greatly benefit from knowing the extent of the individual's liability for credit decisioning and management purposes
- **Reduces future innovations** – Information about closed accounts could be used by innovative CPs to make better lending decisions based on information they can determine about the individual's past behaviours (noting that this is distinct from assessment of their ability to service a future loan).
- **Closed limited and terms and conditions don't cause harm to individuals** – Members have advised that limits from closed accounts are currently excluded from CP serviceability calculations.[89]

We note that this is related to the issue of the use of historic CCLI outlined below. Greater ability to disclose and use historic CCLI would make solving this issue – particularly as it pertains to accounts that have been close – less critical. We have one recommendation across both of these issues – see **Recommendation 12** below.

Historic CCLI

The 2021 CR Code Review considered whether the Privacy Act permits CRBs to use 'historic' CCLI (i.e. CCLI which has been previously disclosed, but remains within its retention period). Examples of historic CCLI include previous credit limits, the name of a previous credit provider (in the case of the sale of the debt or CP merger), or previous terms and conditions such as interest-only repayments.

The 2021 CR Code Review concluded that the legislation is ambiguous about whether the disclosure and use of historic CCLI is permitted; in the interim the OAIC suggested that CRBs only disclose 'current' CCLI.[90]

Arca considers that there would be value in CRBs being permitted to disclose historic CCLI that is still within its retention period. In forming this view we note:

- **Historic CCLI may help address existing issues and consumer confusion**: for instance, the issues about the meaning of maximum amount of credit post account closure are less significant if e.g. the previous (pre-closure) limit is also available. Additionally, as noted by consumer advocates in response to the 2021 CR Code Review, visibility of previous credit provider names could help individuals to identify debts that have been sold and/or where the CP has changed over time

[88] This information is also a type of CCLI that must be disclosed by CPs: see paragraph (g) of the definition of CCLI in the Privacy Act, and paragraph 6.4 of the CR Code.

[89] To the extent that the existence of a pre-closure limit or terms for a closed account could lead to consumer confusion, the issue is likely to be with how the information is presented on credit reports prepared by CRBs, rather than the fact the information exists.

[90] 2021 CR Code Review Final Report at pages 59-60.

- **Historic CCLI has value.** A prospective CP may benefit from knowing about previous repayment terms (e.g. a move from principal and interest to interest only repayments could contextualise any RHI around that same period), previous limits (where e.g. repeated increases in credit limit could suggest a credit hungry consumer)
- **Such information is often available in other jurisdictions.** For example, previous credit limits are available in the United Kingdom and the United States, and other jurisdictions such as Singapore allow for similar historic data such as amount owing (e.g. balance).

As such, Arca considers that CRBs that historic, previously-disclosed CCLI should be able to be disclosed and used until the retention period expires. There is an argument that such conduct is possible now on the basis that the information remains accurate with reference to the time at which it was disclosed.[91] The Review should consider whether historic CCLI can be disclosed now (and therefore whether the means through which that occurs could be set out in the CR Code), or whether law reform is needed.

Recommendation 12

The legal framework for credit reporting should be amended to clarify:

- **the meaning of the different types of CCLI once the relevant account is terminated or otherwise ceases to be in force; and**
- **the extent to which historic CCLI can be disclosed and used.**

Arca considers that the clarifications should have the effect that:

- **the pre-closure limits, CP names and terms and conditions can be disclosed/used for the rest of the CCLI retention period; and**
- **acceleration of an entire liability does not mean the credit limit of the account should need to be changed/reported as zero.**

These amendments could potentially occur through the CR Code, but the Review should still consider this issue and make a clear statement about what changes should be made.

Note: Arca considers that regulation 6 of the Privacy Regulation – which contains aspects of the definition of CCLI – should be incorporated within the CR Code: see Recommendation 1.

Court proceedings information

Court proceedings information is a type of credit information that can be collected, disclosed and used by CRBs. Court proceedings information includes information about certain judgments that relate to any credit that has been provided to, or applied for by, the relevant individual.

In 2023 the OAIC published guidance on the meaning of court proceedings information, as well as publicly available information (another kind of credit information). While we acknowledge that the guidance reflects the current legal settings, those settings highlight the challenges for CRBs looking to collect information about judgments as part of their credit reporting business.

At present, before a judgment can be collected, the CRB must be satisfied that the judgment relates to credit. This is particularly difficult for the CRB to determine based on the information available. For example, even if the other party in the judgment is a CP, the judgment itself could relate to some other matter (such as employment). Additionally, as acknowledged in the OAIC's guidance, in some situations a debt to e.g. a council may be credit, and in other situations it may not be. A CRB has no way of being able to determine whether such a judgment can be collected.

[91] For example, if a limit is increased from $5000 to $8000, the $5000 is still an accurate reflection of the amount of credit available at that earlier time.

Additionally, not all jurisdictions in Australia supply judgments (or information about judgments) to CRBs, and those that do make information available do so in different ways. This adds cost and complexity for CRBs relative to the other types of information they collect.

Based on the feedback from CRBs, it appears that:

- the current arrangements are unworkable – i.e. it is impossible to identify from the information available whether or not they are permitted to collect a particular judgment; and
- information about judgments has value and would enhance their offerings to CPs.

This is an area that would benefit from deeper consideration – including around potential solutions. We would encourage the Review to consider this issue, including:

- whether changes could be made to judgments, or the information about judgments, to better allow CRBs to determine whether they are able to collect the information – noting that case by case assessment and detailed manual review are unlikely to be feasible given the scale of CRBs' operations;
- whether judgments, or information about judgments, could be made available in more consistent ways;
- whether any overseas jurisdictions have better solutions for the collection of information about credit-related judgments.

Recommendation 13

The Review should consider what changes can be made to facilitate CRBs being able to collect, disclose and use information about judgments relevant to the individual's creditworthiness. Consideration should cover the relevant provisions of the law, but also whether other practical measures could:

- **create certainty about what information a CRB can collect; and**
- **significantly enhance the consistency of available information and the efficiency with which it can be collected.**

5.4 Has financial hardship reporting improved the quality of lending decisions and the suitability of loans?

Context to financial hardship reporting

In 2008 the ALRC recommended that information about an individual's repayment performance history be included within the credit reporting system – in part on the basis of analysis from Arca and some of its Members about the potential improvement to the predictive power of credit reporting information. The ALRC concluded that CPs "presented a strong case that repayment performance information would significantly improve the predictive value of credit reporting information and would be implemented by credit providers, if permitted by law".[92] This recommendation led to the inclusion of RHI within the credit reporting system from 2014.

Following the 2014 reforms, the credit reporting system did not include information about whether the individual was receiving hardship assistance from their CP (including in response to a hardship notice under the National Credit Act). As noted in the Explanatory Memorandum for the bill which gave effect to the FHI regime, "[t]his situation can reduce the efficacy of the credit reporting system by restricting the visibility of hardship information about a consumer that is relevant to their creditworthiness. This information asymmetry in turn affects the ability of credit providers to meet their responsible lending

[92] Australian Law Reform Commission, *For your Information: Australian Privacy Law and Practice*, Report No 108 (2008) Ch 55 at 54.159. The analysis supplied by industry stakeholders is outlined in detail at 55.124-55.132.

obligations."[93] Additionally, the Explanatory Memorandum outlined that the then law was leading to inconsistent outcomes:

> In the absence of specific hardship arrangement information, there has been inconsistent industry practice in how repayment history information is reported—leading to potential distortions in credit assessments. Some credit providers may report a consumer's repayment history information against the original credit contract, others do not report repayment history information when a hardship arrangement is in place and other credit providers report repayment history information against the hardship arrangements that are in place. Consequently, consumers in otherwise similar financial circumstances can have markedly different repayment history information on their credit reports depending on their credit provider.[94]

FHI was intended to "ensure that credit reporting is consistent and interpretable, and consumers in similar financial situations will have correspondingly similar information in their credit reports."[95] It could be expected that more consistent reporting of RHI, with the addition of context about whether that RHI related to the contractual terms or an ongoing hardship arrangement, would improve the predictive power of credit reporting information (and therefore ultimately improve lending decisions).

Effect of financial hardship reporting

It is important to note that the reforms enabling the reporting of FHI are still comparatively new – it will be easier to assess their effectiveness once they have operated for a longer period of time. However, early indications from Arca Members are that the regime is broadly achieving its objectives, in that it has:

- led to more consistent reporting of information about repayments in the context of hardship assistance relative to before the commencement of the reforms;
- provided more visibility of the existence of hardship arrangements;
- has supported CPs in making decisions on credit applications by individuals who have recently received hardship assistance.

Arca has surveyed Members and is gathering data on the effect of the reforms, and how prospective CPs respond to a credit application from an individual with FHI (i.e. who has received hardship assistance in the recent past).

A survey of 21 Arca CP Members, comprising a range of large, mid-side and small CPs, found that 100% of those CPs were prepared to provide credit to an individual with FHI, so long as that credit was otherwise suitable. Put another way, none of these CPs were treating FHI as a black mark that automatically prevented further lending. Most CPs have a process for referring individuals with FHI for a manual assessment. However, some CPs rely on their existing processes especially where the FHI was disclosed over six months ago (i.e. the credit decision is based on other matters reported by the individual or reflected in their credit information).

The survey findings are supported by the initial quantitative data we have received from Members, which indicates that individuals with FHI can (and in many instances do) receive further credit. The information received indicates that where applications by individuals with FHI are declined, this is generally because of other credit information about them (i.e. they are declined *with* FHI, not *because of* FHI). For instance, substantially negative RHI or default information can lead to CPs declining subsequent applications – this

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[93] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 2.4

[94] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 2.9

[95] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 2.10

highlights the importance of request hardship assistance early before the individual's situation deteriorates.

As we continue to collate quantitative data from CPs we will provide an update to the Review – we expect to be able to do so by July 2024. We also plan to use this information to prepare infographics and other materials for CPs and those assisting individuals (such as financial counsellors), to provide all parties with assurance that FHI does not prevent an individual from accessing further credit.

Potential improvements to financial hardship reporting

Notwithstanding the earlier comments that the reforms enabling the reporting of FHI appear to be working well, experience to date has identified some minor areas for possible improvements, to lead to:

- better outcomes for individuals and CPs by providing additional flexibility about *when* a hardship arrangement is reflected in FHI; and
- more consistent reporting of substantially similar hardship assistance which takes slightly different legal forms.

The first issue arises from the specific and inflexible drafting in the Privacy Act relating to the month(s) in which financial hardship information is reportable; see subsection 6QA(4). The language refers to FHI being reported for months in which a payment is "affected by" the FHA. Importantly, we consider that this provision is intended to set out how often the FHI is reported for the type of arrangement (i.e. the 'first' month for variation FHAs and 'each' month for temporary FHA) rather than setting out strict rules on the timing of that report.[96]

While in most cases the law as written represents an appropriate approach to the reporting of FHI, in some cases it creates additional complexity in designing the systems processes for reporting FHI and, in specific cases, could result in poor outcomes for all parties.

To illustrate, FHI in relation to a variation FHA is reported for the "first monthly payment affected" by the variation FHA. In some rare cases (such as for credit cards with no outstanding balance or certain lines of credit under which a payment is only due once the limit is reached), there may not be an obligation to make a payment for a significant period of time after the variation has occurred. When a payment does in fact become payable, that payment may have little or no connection to the variation FHA agreed many months (or even years) earlier. In this case, it would make more sense for the variation FHA to be reported in the month that it was agreed.

Our ongoing engagement with Members regarding FHI reporting has noted several such scenarios in which the specific and inflexible language of subsection 6QA(4) creates complexity and potentially poor consumer outcomes. Rather than seeking to address all those specific circumstances, we consider that it would be better to allow for some flexibility within the law to ensure that the FHI is reported in the *appropriate* month (whether that be a single month for variation FHAs or multiple months for temporary FHAs). To the extent necessary, the CR Code could provide additional rules on what is appropriate in specific circumstances (such as that described above). Such flexibility would ensure that FHI was reported more consistently and better able to be interpreted by CPs.

Recommendation 14

Subsection 6QA(4) of Privacy Act (which relates to the timing of the reporting of FHI) should be amended to allow for greater flexibility to ensure that FHI can be reported in the appropriate

[96] This position is confirmed by the CR Code: see paragraph 8A.1(c).

month. Additional guidance could be included as necessary in the CR Code (which would, in any case, need to be updated to reflect the changes).

We understand that the provisions around hardship reporting in the Privacy Act were informed by the design of hardship assistance by ADIs. ADIs often provide hardship assistance in the following form:

- a payment deferral without a contractual variation for set period, such as 3-6 months. This hardship arrangement is visible in the credit reporting system as a temporary FHA – i.e. with FHI of A reported for each month that the payment obligations are affected by the hardship arrangement.
- at the end of the assistance, a contractual variation to deal with e.g. any need to extend the loan term or permanent change to the regular repayments. This arrangement is visible in the credit reporting system as a permanent FHA – i.e. with FHI of V reported in the first month that the payment obligations are affected by the hardship arrangement.

In summary, hardship arrangements of this form will commonly show as a string of FHI of A, followed by a single piece of FHI of V.[97]

However, we are aware that some non-ADI CPs offer substantially similar hardship assistance (a payment deferral period, accompanied by permanent changes to deal with the deferred repayments) through a single up-front contractual variation. However, when assistance is given in this form, the hardship support is only visible in the credit reporting system through a as a single permanent FHA (i.e. with FHI of V in the first month a payment is affected). Other CPs have no visibility of the length of any payment deferral period in the same way they do if the contractual change occurs at the conclusion of the hardship assistance.

Although it would require some system changes from non-ADI CPs, we believe a better outcome would be for these two analogous types of hardship assistance to be reflected more consistently within the credit reporting system (i.e. the reporting should reflect the nature of the assistance, not solely when the contractual variation occurs). This will lead to better outcomes for CPs and consumers, as CPs will be better able to interpret the FHI they receive and make the type of informed lending decisions the explanatory materials expect,[98] and that data suggests that CPs are attempting to make (see the answer to the next question below).

Recommendation 15

The hardship reforms should be amended to ensure that an up-front contractual variation giving effect to a short-term payment deferral can be reflected with FHI that is more similar to the FHI reported where the contractual variation happens at the end of the hardship assistance process (i.e. after a temporary FHA).

Potential improvements to the use of FHI (and information derived from FHI)

Use of FHI/information derived from FHI for alerts

[97] See Example 2.3 on page 52 of the Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 for an illustration of how this appears. In practice the indicative code of "H" in the explanatory memorandum examples are the same as the "A" codes required in practice under the CR Code.
[98] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 2.12

The intended policy settings behind the financial hardship reporting reforms is that FHI cannot be disclosed to a CP except where the individual is seeking access to new credit.[99] However, Arca does not believe that this is the effect of the law as drafted.

Subsection 20E(4A) prevents FHI, or information from derived FHI, from being used to collect overdue payments. However, it does not prevent the disclosure of credit reporting information to CPs who have disclosed CCLI in respect of a credit which has not been terminated for other permitted purposes, such as assisting the individual to avoid defaulting on their obligations.[100] In this regard, we consider that the table 1.1 of the relevant **Supplementary Explanatory Memorandum** is factually incorrect.[101] In short, we believe the law as drafted permits a CP to receive an alert about another CP reporting FHI about an individual.[102]

Arca considers that FHI, and information derived from FHI, **should** be capable of being used appropriately, including to allow CPs to help their customers avoid defaults. Appropriate use could take the form of a CP receiving an alert, conducting a holistic assessment of the individual's circumstances to determine whether they should take action, such as proactively asking the individual whether they require hardship assistance on their other credit. Any use would be restricted to the purpose of assisting the individual to avoid default, and should not be used e.g. to permanently restrict the account (i.e. immediately reducing the credit limit or closing the account).[103] We are of the view that such action is consistent with:

- the intent of the financial hardship reporting reforms that FHI 'prompts a credit provider to make further enquiries in order to make a holistic assessment of a consumer's financial situation';[104] and
- the expectations of regulators that CPs do more to proactively assist individuals at risk of default, hardship or poor outcomes.[105]

We acknowledge that there could be potential concerns about some of the actions a CP could take in response to an alert based on FHI. However, we consider that banning all alerts on this basis is unnecessary, and CPs taking steps which could benefit consumers (i.e. other than those action that give rise to the potential concerns). Rather, it would be preferable if the law:

- allowed for FHI to be used to allow CPs to help their customers avoid defaults, which could include offering hardship assistance to the customer (i.e. as we consider the law already does); and
- prohibited any actions based off those alerts that do not assist 'the individual to avoid defaulting on his or her obligations in relation to consumer credit'.

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[99] See the Supplementary Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraphs 1.14 and 1.18. These amendments were inserted into the bill during the Parliamentary process.

[100] This is the combined effect of Item 5 of the table in s20F(1) (which sets out the permitted CRB disclosure) and item 5 of the table in s21H (which outlines the permitted use by the CP). The permitted use is restricted by the paragraph 16.2 of the CR Code which specified that the CRB must only disclose the credit reporting information where circumstances reasonably indicate the individual is at significant risk of default in relation to their obligations.

[101] This table does not list an equivalent of Item 5 of the table in s20F(1); Arca believes that s20E(4A) only prevents disclosure of the kind outlined in Item 5 of the table in s20F(1) in the circumstances set out in s20E(4A), not more generally.

[102] Subject to the normal restrictions about alerts, set out in paragraph 16.2 of the CR Code.

[103] See also s67(1A) of the National Credit Code (Sch 1 to the National Credit Act).

[104] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 1.228.

[105] See ASIC *REP 782* (REP 782) at pages 43-44 - in particular we note that the table on page 44 mentions CPs using negative RHI disclosed by other lenders as an early warning indicator for communications about the availability of hardship assistance. See also ASIC REP 580 at paragraphs 54-56 and 166-191.

If there are any further actions that a credit provider could take that are deemed undesirable (but are nevertheless captured by the concept of 'assisting the individual to avoid defaulting'), these should be subject to a specific prohibition in the Privacy Act or CR Code.

Recommendation 16

The Review should clarify that FHI, or information derived from FHI, can be disclosed to a CP through an alert, and then used to assist the individual to avoid defaulting on their obligations. The restrictions that normally apply to alerts should apply in this context. If some specific actions that could follow from an alert are undesirable (but are nevertheless permitted under the current law), then those actions should be prohibited (either in the Privacy Act or the CR Code) rather than resulting to all alerts being prohibited.

FHI and guarantees

As noted above, the intent of the financial hardship reporting reforms is that FHI not be disclosed to a CP except where the individual is seeking access to new credit. However, the drafting in respect of guarantees is deficient, and achieves the opposite outcome. In particular subparagraph 20E(4A)(a)(iii) prevents the disclosure of FHI (or information derived from FHI) for assessing whether to accept the individual as a guarantor in respect of **new** credit applied for; it does not prevent the disclosure of FHI for assessing whether to accept a new guarantee on **existing** credit.

This drafting causes issues because:

- **there is no good policy basis for distinguishing between these scenarios** – in either cause the prospective guarantor is potentially exposed to greater liabilities through giving the guarantee. The FHI is relevant in either situation to the type of holistic assessment the financial hardship reforms generally expect of CPs; whether or not the credit is new or has been on foot for some time is irrelevant.
- **The distinction is likely to be extremely difficult for CRBs to comply with**: It may not be immediately apparent to a CRB whether or not an enquiry is being made in respect of a potential guarantee for new credit or a potential guarantee on existing credit (both of which are 'credit guarantee purposes' as defined in the Privacy Act). As such CRBs may struggle to determine whether s20E(4A)(a)(iii) prevents them from disclosing information.

Recommendation 17

The Review should examine the effect of the restrictions of FHI (and information derived from FHI) in the context of assessing whether to assess the relevant individual as a guarantor, including whether removing the restrictions in s20E(4A) for this purpose would support the intent of the financial hardship reporting reforms.

5.5 Is financial hardship reporting dissuading some consumers from requesting financial hardship relief?

Arca is aware of limited feedback from *some* CPs and other stakeholders that some individuals may be rejecting hardship assistance from their CPs based on concerns about the reporting of financial hardship information. Other CPs have informed us they do not see this issue at all (i.e. their customers are not being dissuaded from receiving hardship assistance).

The CR Code requires CPs to give individuals information about the arrangements that are put in place, including some arrangements which are not FHAs.[106] Explaining the different arrangements can be complicated, and subject to how the explanation is received by the customer, could lead to confusion or decisions which have a substantially negative effect on the individual and/or their credit report (such as

[106] CR Code, paragraph 8A.4.

rejecting an offer of hardship assistance, where the FHI cannot affect the individual's credit score, and in turn leading to the CP reporting negative RHI, which could lead to a significant drop in the individual's score).

Arca is undertaking a piece of work with its Members to enhance the disclosures given to individuals about hardship and the potential effect on their credit report.[107] Draft disclosures have gone through a readability assessment, to ensure they can be understood by a person with an eighth grade reading level, and are now being consumer tested. The intention of this work is to:

- **ensure that disclosures consumers receive are clear and targeted** – that is, the consumer received the right message for them at the right time. This approach acknowledges that individuals requesting/receiving hardship assistance are in a state of stress, and more detailed technical information may be better provided in writing after e.g. the initial phone call, when they are better placed to review that information in detail. Similarly, certain information is best provided when it is most relevant – for example, information about the consequences of non-compliance with a hardship arrangement may be better provided if/when there are genuine concerns about whether the individual will make any payments the hardship arrangement requires.
- **drive more consistent messages about hardship and the credit reporting implications across CPs**, noting ASIC has identified inconsistencies in disclosures as an issue.[108]

Additionally, we note that ASIC has recently published **updated information on its Moneysmart website** intended to encourage individuals to request hardship assistance from their CPs if they are struggling to make repayments. The clear implication from the ASIC messages is that it is better to contact a CP and request assistance than miss payments, and that receiving assistance is better for the individual (and for their credit score) than missing payments.

We believe that these enhancements to communications, and the continued adaptation to the FHI regime, will help address the concerns a limited number of individuals seem to have about hardship and their credit report.

It is important to note that the limited feedback is not grounds for removing RHI or FHI from the credit reporting system (in some or all cases). In this regard we note:

- **Understanding of the reforms will improve over time**: the credit reporting system is complicated, and consumer understanding of the effect of FHI (relative to e.g. negative RHI) can be expected to improve over time, aided by measures such as the Arca scripting and the ASIC education material.
- **RHI (and FHI) improve credit reporting, which benefits all parties and aids economic stability**: As outlined above, and in the materials justifying and explaining the inclusion of RHI and FHI within the credit reporting system, information about repayments adds significant predictive value to the set of credit reporting information, reducing information asymmetries, promoting and empowering CPs to make better decisions at lower cost, and improving financial inclusion. Positive information such as RHI creates positive incentives for individuals, who are in effect rewarded by positive repayment behaviour with higher credit scores, making it easier for them to obtain suitable subsequent credit on competitive terms. Additionally, FHI (and the protections afforded through Part IIIA of the Privacy Act, including the prohibition on FHI affecting credit scores), rewards consumers for requesting assistance, and allows CPs to better differentiate between those consumers who have taken action, requested and received assistance, and those who have simply missed payments.

[107] ASIC has acknowledged that this work is underway: see ASIC REP 782 at paragraph 268.
[108] See Report 782 *Hardship, hard to get help: Findings and actions to support customers in financial hardship* and Report 783 *Hardship, hard to get help*

- **No obvious benefits from removing information**: It is unclear how making financial hardship assistance more opaque would actually help individuals receiving assistance from CPs. Instead, removing information from the credit could reinforce incorrect preconceptions that assistance is "bad" for an individual's creditworthiness and should therefore remain hidden. Instead, providing information to individuals (about the benefits of receiving assistance and the ways their credit report is protected by their actions) and CPs (through FHI, to allow them to better understand the individual's circumstances and prompt further inquiries in the context of subsequent applications for credit) is likely to lead to better decision-making and long-term outcomes.
- **Consumer concerns reflect broader issues of financial literacy:** Potential negative reactions to explanations of the effect of FHI at least partially reflect overall low levels of financial literacy amongst Australian consumers. Isolating the explanation of FHI as being the reason some individuals do not accept financial hardship relief ignores both the limited understanding some individuals have (including around basic credit reporting concepts) and also the stressful situation those individuals are experiencing. Good disclosure requires a base-level understanding about credit reporting to be established before providing more detailed information in an appropriate format; failure to take this approach could increase consumer unease about FHI. This rationale has informed Arca's work on enhancing disclosures about hardship; we believe that there is support amongst external stakeholders for the approach Arca is taking.
- **Research suggests that suppressing data harms consumers:** This question was explored in detail by PERC, which modelled the effect of suppressing data. In general terms, even if removing data from the system could increase credit scores, it had a very significant negative effect on access to credit (i.e. the scores at which CPs are willing to lend in an environment with less data are higher, and rise by more than any increase in scores resulting from data suppression).[109]

5.6 What are the potential implications of the proposed BNPL regulations on the credit reporting framework?

It is important to note that the credit reporting framework can accommodate BNPL providers participating within the system. This is already occurring: as noted in Arca's **response to the Treasury BNPL options paper**, at January 2023 there were five BNPL providers who were signatories to the PRDE, and several providers were undertake credit enquiries with at least one credit reporting body.

The proposed BNPL reforms, if implemented, would require BNPL providers to obtain an Australian credit licence, and would ensure that the National Credit Code applied to low cost credit contracts (LCCCs) including BNPL credit. As such, those providers would be able to participate at the comprehensive level, including accessing and disclosing RHI and FHI.

Arca strongly supports BNPL credit providers participating within the comprehensive credit reporting regime. The consistent and standardised use of CCR information by BNPL providers has the potential to bring about a number of significant benefits to consumers, to CPs and to the wider community, which include:

- **Reducing the potential for consumer harm.** The ability for CCR information to prevent lending decisions which could lead to consumer harm will be particularly relevant where the consumer is already experiencing difficulties in meeting their repayment obligations under existing BNPL or other types of credit accounts
- **Enabling credit providers to make better credit decisions**. CCR information provides credit providers with improved quality and more complete data, reducing information asymmetries and supporting better lending decisions. If a customer had some negative information on their credit report, but also a history of positive payment behaviour, the positive payment behaviour can

[109] See PERC, Why Addition is Better than Subtraction: Measuring Impacts from System-wide Deletion and Suppression of Derogatory Data in Credit Reporting, (2021), especially the key findings on page 7.

provide better context to understanding the customer's overall position, and support the customer's ability to service new credit. It's important to note that BNPL credit providers participating in CCR will also provide flow-on benefits to other CPs, who will have ready access to additional information about a prospective borrower's commitments under BNPL credit and their repayment history to inform their credit decisions and management.

- **Enabling consumers to access products on more favourable terms** than might otherwise have been the case – for instance, individuals with positive behaviour may present a lower credit risk and therefore CPs may be willing to offer credit at e.g. lower cost or for longer periods
- **Encouraging competition and innovation amongst BNPL and other credit providers**, as the information available through the credit reporting system will allow them to refine their products and services, and also to better support individuals from a credit management perspective.
- **Allowing BNPL providers to comply with their (proposed) responsible lending obligations at lower cost**, through use of information returned in response to an information request to a CRB. In this regard we acknowledge the proposed regulations which would require BNPL credit providers to make a credit enquiry.[110]

Arca's submission to the Treasury Options Paper sets out our views about the benefits of BNPL credit providers participating in comprehensive credit reporting in more detail – we reiterate these views to this Review.[111]

We acknowledge that the reforms the Government has introduced into Parliament on would require LCCC providers to make an enquiry with a CRBs, and for providers who offer products with a limit of over $2,000, this enquiry would require them to participate at the partial level. We also acknowledge views in other submissions in support of wider participation in comprehensive credit reporting (including measures which would lead to CCLI and/or RHI about BNPL credit being visible within the credit reporting system). We continue to support wider participation by BNPL credit providers in comprehensive credit reporting, and think this outcome would provide benefits to individuals and the wider credit industry.

We have identified one possible refinement of Part IIIA of the Privacy Act to reflect the BNPL regulatory reforms. We consider that there is benefit in allowing a BNPL credit provider to obtain updated credit reporting information before making a protected increase to the credit limit of a low cost credit contract[112] without needing to make a hard enquiry.

Although the CP could obtain this information through a hard enquiry, it is possible that there could be multiple protected increases from the one BNPL provider during the 2-year protected period, which we expect will dis-incentivise BNPL providers from making an information request. Failing to obtain this information makes it harder for the BNPL provider to identify whether there have been any material changes in the individual's circumstances since the initial enquiry (e.g. the individual has taken out lots more credit). Providing an easy means without affecting an individual's credit report promote best practice and ensure individuals are not exposed to undue harm, while avoiding consumer confusion about enquiries which may not be thought of as 'applications' by individuals. Arca has other recommendations for additional use cases for credit reporting information: see our response to question 7.1 and **Recommendation 27**.

Recommendation 18

The Privacy Act should be amended to permit the disclosure of credit reporting information by CRBs (and subsequent use by CPs) to allow for a CP to obtain updated information before making a protected increase to the credit limit of a low cost credit contract.

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[110] See proposed regulation 28HAD of the National Credit Regulations.

[111] See the material at pages 24 to 31 in particular.

[112] The framework for protected increases to credit limits of LCCCs was outlined in the proposed section 133BXD of the National Credit Act.

5.7 How can the current retention period arrangements be improved?

As a general observation, many of the retention periods within Part IIIA of the Privacy Act are short by international standards. The Review may wish to consider relevant international comparison points for the retention of data when determining if the credit reporting system is operating effectively (i.e. providing CPs appropriate amounts of information to both make good lending decisions and manage their existing credit portfolios in ways that benefit their customer bases).

Retention period for FHI

The retention period for FHI is twelve months; less than the retention period for RHI of two years. As highlighted by the information above, this is an unusually short retention period. Information about missed payments and/or hardship assistance is often retained within credit reporting systems for a longer period of time.

Although the policy intent behind the shorter retention period was to balance the interests of consumers in financial hardship,[113] we consider that increasing the retention period for FHI to align with that for RHI could have a number of benefits, including for those individuals. The experience of some Members has been that FHI can explain or contextualise RHI (such as negative RHI leading up to the establishment of a FHA) in ways which can make CPs more comfortable providing credit. Additionally, some Members have noted that the existence of FHI supports them having a more focused, targeted conversation with customers than they would be able to without that information; this can reduce the need for individuals to fully re-explain the circumstances that led to their difficulties making payments. As such, having FHI available for the full 24 months of corresponding RHI would allow this data to be better contextualised and support more targeted conversations between CPs and their prospective customers.

We also note our experience to date is that FHI does not prevent an individual from obtaining further credit – see our response to question 5.4.

Recommendation 19

The Review should consider whether the retention period for FHI should be extended to 24 months, to align with the retention period for RHI.

Retention period for enquiries

The retention period for enquiries (i.e. records of information requests) is five years.[114] This is longer than the retention period for CCLI (which is retained for two years once the relevant credit is terminated). For example, if a credit account is closed after twelve months, the enquiry made before the account was opened will remain in the credit reporting system for two years after the CCLI relating to the actual account has been destroyed. We query whether this is the most appropriate outcome after the implementation of the Review's recommendations, particularly if those recommendations include measures or changes to increase participation at the partial or comprehensive level.

Arca Members reiterate that enquiry information has predictive power and remains an important part of their approach to making credit decisions. For example, numerous enquiries close together can be an indication that an individual is desperate for credit (or a sign of e.g. fraudulent conduct), which is valuable information for a CP to know when considering an application. Although the amount of weight given to enquiries varies based on the individual's circumstances (and the number and frequency of enquiries), in general terms we would expect that aged enquiries – e.g. those more than three or four years old – are likely to be less valuable for CPs making credit decisions or managing their existing credit facilities than newer enquiries.

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[113] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraph 2.38.

[114] See item 3 in the table at s20W of the Privacy Act.

We also observe that there has been a significant amount of consumer confusion about the effect of enquiry information on an individual's credit score, and the likelihood that they will receive further credit. This can create incentives for people to seek to have (legitimate) enquiries removed – including by using credit repair services that charge significant fees (even when free services are available and/or the effect of any enquiry on the consumer's score or creditworthiness is very limited).

In this context, the Review could consider whether shortening the retention period for enquiry information could help address some of this confusion (and the issues mentioned above), while also reflecting subsequent developments including the facilitation and uptake of comprehensive credit reporting. However, Arca stresses the following:

- enquiry information should still be retained for a period within the credit reporting system – 3 years may be appropriate
- as removing information from the system has a detrimental effect on its ability to support CPs to make good lending and credit management decisions, any reductions to the retention period should be accompanied by measures to make more – and more useful – information available to CPs (see our responses to questions 5.2, 5.3, 5.6 and 7.1 for Arca's recommendations about additional data and use cases that would add greater value and help CPs support consumers).

Recommendation 20

As part of a suite of measures to enhance the credit reporting system (including the addition of extra types of credit information, the Review could consider whether a shorter retention period for information of the kind described in s6N(d) and (e) of the Privacy Act (such as three years) may be appropriate. Such a period could help address any confusion about the effect of enquiries – particularly aged enquiries that an individual may not recall – on an individual's creditworthiness.

5.8 Should limitations be placed on listing of defaults long after the debt was due?

Arca would support appropriate limits in the law on the ability of CPs to list defaults long after the relevant debt was due. We note that our answer to question 5.3 in respect of default information is relevant to our answer to this question.

There are already obligations to this effect in the PRDE. Section 20 of the PRDE provides:

> When contributing default information … a CP must ensure default information is contributed within a reasonable timeframe of the account becoming overdue.[115]

We are aware of issues with non-PRDE signatories contributing default information long after the relevant account became overdue. When combined with the retention period for default information (5 years from date of collection), the effect of this delayed contribution is that the default information may remain in the credit reporting system for a significant amount of time after the relevant statute of limitations periods in respect of the debt has expired. This issue was considered by the 2021 CR Code Review: Proposal 19 of that review recommended new obligations on CRBs and CPs intended to address the late listing of default information.[116]

When Arca explored implementing proposal 19 of the 2021 CR Code Review, it quickly became apparent that the new obligations proposed were likely unworkable, given the complexity of tracking whether the statute of limitations period has expired in respect of each debt. As outlined in Arca's 2023 CR Code application, we concluded that law reform could be an appropriate response to this issue: our

[115] Principles of Reciprocity & Data Exchange, version 23, section 20
[116] See Arca 2023 CR Code Application, pages 29-30.

correspondence with the CR Code Reviewer and the OAIC indicated that those parties also held this view.

During the CR Code process, stakeholders identified a range of solutions to the underlying problem of late contribution of default information. Those solutions could be grouped into two categories:

- restrictions on the ability of CPs to list default information long after the default occurs (a 'restriction approach'); and
- changes to the retention period for default information which link retention of default information to the date on which the debt first became overdue, so delays contributing default information would substantially reduce the amount of time the information is retained for (a 'retention period' approach).

Of these options, Arca believes a restriction approach is the most appropriate solution to this policy problem. Changes to the retention periods would likely substantially reduce the time for which *all* default information is retained in the credit reporting system. We note:

- **Defaults cannot be listed immediately after a payment is missed**: there are minimum time periods and several notice requirements (with imposed waiting periods) which mean that time must elapse between a missed payment and the contribution of default information.[117] In practice, we would not expect default information relating to unsecured debts to be disclosed sooner than 6 months after the first payment is missed. Disclosure of default information for secured debts can take longer given the additional processes needed to deal with the security and/or the secured property. In either case, the time than can elapse before default information is disclosed could be further extended due to hardship requests made by the consumer, and hardship assistance granted by the CP. Hardship assistance can be granted for many months – in these circumstances the effective retention period for default information could be significantly reduced
- **Retention periods for default information in Australia are already shorter than other comparable jurisdictions**: This is outlined in more detail above, but defaults and similar conduct remain within credit reporting systems in the US (7 years), UK (6 years), Singapore (indefinitely for outstanding or partially paid defaults) and Canada (6 years) for longer than they do in Australia. Reductions in the retention period for default information would leave Australia out of step with similar jurisdictions.
- **Default information is frequently used by CPs when making credit assessments**, so substantially reducing the amount of time this information is in the credit reporting system will reduce the efficacy of the system, exposing CPs to additional information asymmetry and credit risk. Furthermore, individuals with default information could be in a precarious financial situation: additional credit provided (in part because a previous default is no longer visible from their credit information) may not actually be in the consumer's best interests and could expose them to harm. CPs who do not participate at the comprehensive level rely heavily on default information for these insights.

In considering a solution based on a restriction approach, we consider the Review should consider:

- At present, there is clearly defined 'date of default' within the legal framework.[118] This date would need to be clearly established and agreed, as it would be the relevant starting point for

[117] Default information can only be disclosed where an individual is at least 60 days overdue in making a payment. Additionally, before default information can be disclosed, the provide must have given the consumer notices under sections 6Q and 21D(3)(d) of the Privacy Act. The notices cannot be given together and at least 30 days must elapse before the final notice – the section 21D(3)(d) notice can be given: see paragraph 9.3 of the CR Code. Additionally, 14 days must elapse after the section 21D(3)(d) notice is given before default information can be disclosed: see s21D(3)(d)(ii) of the Privacy Act.

[118] At present there is the concept of the date the default information is disclosed by the CP, and the date that the default information is collected by the CRB. These dates can be different (and the date that information is collected by a CRB can vary across different CRBs). There is no single "date of default".

consideration of how long CPs should have to disclose default information (if they wish to do so). Related but different dates used by CPs and CRBs include the date the CP has met the legal requirements to disclose default information (i.e. the relevant notices have been provided – noting that this can be a long time after the first payment was missed), as well as the date on which the CP receives default information

- As noted above, the circumstances leading to a default can be complex – for instance there may be multiple periods of hardship assistance as well as disputes (including disputes with AFCA). There would need to be sufficient flexibility in any legal requirement to potentially allow for CPs to list default information after all these steps have occurred. Put another way, repeated hardship requests and AFCA disputes with little merit should not be able to be used as a stalling tactic to completely prevent default information being disclosed in all cases.
- Care should be taken to ensure a new obligation does not *require* CPs to list default information. For instance, constructions to the effect of "CPs must list default information within a reasonable period" could be mis-read as requiring default information to be disclosed in all instances – this may not be an appropriate outcome (and would not be supported by other stakeholders),
- Any obligation should be part of the legal framework, so that it applies to entities who are not PRDE signatories.

For these reasons, Arca tends to consider that a restriction approach where the relevant obligation has a degree of flexibility would appear to be the most appropriate solution.

Recommendation 21

The Privacy Act should be amended to include a new obligation that restricts the ability of CPs to disclose default information long after the default has first occurred (i.e. any default information that is going to be disclosed must be disclosed within a reasonable period). The relevant explanatory materials should provide guidance on the period within which disclosure can occur. In any event it should be clear that disclosing default information soon before, or after, the relevant statute of limitations period has expired is no longer permitted. As part of these changes s6Q(1)(c) should be repealed: see Recommendation 10.

Note: Recommendation 10 relates to the repeal of s6Q(1)(c) because that provision makes it impossible for CRBs to comply with the law.

5.9 How should the credit reporting framework be adjusted in light of other financial data sharing arrangements such as the CDR?

In short, we do not believe that material adjustments to the credit reporting framework are needed in light of CDR or other similar arrangements at this time. In this regard we refer to our answer to question 3.3.

It is important to acknowledge that there are very significant differences between credit reporting and CDR which means that the regimes are not substitutes for one another. As noted by the issues paper, CDR is premised on consumer consent. A consent-based system such as CDR does not provide an appropriate response to the information asymmetry present in the credit market. Recipients of data through the CDR have no visibility of information the consumer has actively chosen not to provide them (for example, potentially in respect of credit accounts with missed payments, or which are not front-of-mind due to low usage).

Feedback from Arca Members has highlighted that CPs generally find it preferable to credit reporting information rather than data received through the CDR. This reflects both:

- the value-add from the services provided by CRBs, including analytic-driven components such as a credit score, as well as the structured summary formats that CRBs provide that are well-suited to CP lending decision tools; and

- the relative completeness of the credit reporting data – i.e. there is less need for the CP to consider whether information has been excluded by the individual (noting that further measures to encourage participation and data consistency across CRBs will only increase this advantage).

However, feedback from Members indicates that over the medium-to-long term, there is potential for the credit reporting and CDR frameworks to complement one another. Feedback from CRBs indicates that, when combined, credit reporting information and information about e.g. transaction accounts (available through means such as CDR) can increase the predictive power of credit scores and other analytical tools. Additionally, complementing credit reporting information with data sourced through CDR has the potential to enhance CP decision making processes: for instance, information from the credit reporting system could be used to understand the individual's liabilities and repayment history, while CDR data could remove the need to obtain e.g. bank statements to understand the individual's other expenses.

However, feedback from Arca Members indicates that further time and enhancements to the CDR regime are needed before these advantages can be realised. As noted in our submission to the CDR Consent Review,[119] improvements to the consent-based format of the CDR would help achieve this outcome; we do not believe that material changes to comprehensive credit reporting are needed to achieve this outcome. Rather, changes to the credit reporting regime on the basis that information is (potentially, theoretically) available under CDR would undermine the ability of the credit reporting system to overcome information asymmetries, making credit decisioning and management more difficult and costly for CPs, with flow-on detriments to individuals and the economy. If usage of the CDR system remains low over time, changes to the credit reporting system to include some of the data available through CDR (such as income) could be worth further consideration – this could be a matter for a future review of the credit reporting framework to consider.

Finally, in respect of the comment in the Issues Paper about accreditation and licensing, we note that all parties in the credit reporting framework are subject to a significant range of obligations, which must be complied with if a party wishes to continue to participate. Before they can participate in comprehensive credit reporting, a CP must become a signatory to the PRDE and establish a relationship with at least one CRB. The CP then has obligations under the PRDE, their agreements with the CRB and the Privacy Act – breaches of these obligations can give rise sanctions and/or regulatory action. CRBs also have obligations under the legislation administered by the OAIC, and are also required to undertake regular independent reviews of their operations. CRBs are also subject to contractual obligations under their agreements with CPs. These various obligations and restrictions are intended to collectively ensure that participants operate in an appropriate way and that risks (including risks associated with inadequate information security) are mitigated.

6. Consumer protection and awareness

6.1 How can consumer understanding about credit reporting be improved?

Ensuring individuals have a good understanding of credit reporting, and its implications for them, helps both those individuals and the credit industry as a whole. For example, consumers who are aware of their credit report may be empowered to take action to improve their credit health – something which is in their long-term interests. For example, an informed consumer can take action earlier when necessary, including contacting their CP(s) about financial difficulties or changes in their circumstances, reducing the risk of defaults or poor outcomes.

[119] See Arca's submission to the CDR Consent Review – CDR rules and data standards design paper.

We observe that additional mandatory disclosure obligations on CPs may not be the answer to any concerns about consumer understanding.[120] Not all consumers read disclosures, and disclosures which are produced to meet regulatory requirements can be long and complex.

For these reasons, other measures to improve consumer understanding has been a key area of focus for Arca and its Members. One key aspect of our work in this regard is the CreditSmart website.

Creditsmart website

Since 2018 Arca has operated and maintained the **CreditSmart website**. CreditSmart provides clear, straightforward information to individuals and their advisers[121] about credit reporting. The CreditSmart website helps individuals understand how credit reporting affects them, offering guidance on credit reporting legislation, financial hardship assistance, and credit health. CPs and CRBs commonly either use Creditsmart content or direct their customers to the CreditSmart website, which ensure that individuals receive consistent messaging. The use of clear, consistent messaging can reduce consumer confusion and complaints, especially for those with multiple financial institutions, and also reduces the burden on CPs and CRBs who might otherwise need to develop their own bespoke material.

CreditSmart currently attracts approximately 23,000 new visitors each month, with around 7,000 referrals from CPs and CRBs. Arca has continually updated and improved CreditSmart, including by:

- Expanding the Creditsmart website so that content is available in ten languages – hundreds of individuals access Creditsmart each month in languages such as simplified Chinese, Persian, Arabic, Hindi and Tamil.
- Preparing additional content, including in response to reforms and developments – for instance, to support the financial hardship reporting reforms Arca created the **Financial hardship hub**.
- Supporting the operation of the website through online education campaigns on other platforms to reach young adults and new audiences. These campaigns specific topics of relevant, including the difference between credit reports and credit scores, buy now pay later credit, cost of living pressure and financial hardship assistance.

Improving consumer understanding

Since 2019 Arca has partnered with YouGov to conduct regular consumer research on credit and credit reporting. That research indicates a steady increase in the proportion of individuals who have obtained a copy of their credit report (including in the last 12 months). In 2019, 57% of respondents indicated that they had never checked their credit report; by 2023 that figure had fallen to 37%. Further detail is available in the table below:

Table 1: Proportion of consumers who have checked their credit report, 2019-2023[122]

	May 2019	Jun 2020	Dec 2021	Aug 2022	Apr 2023	Nov 2023
Question: Have you ever checked your credit report?						
Yes, in the last 12 months	27%	31%	29%	30%	40%	39%
Yes, more than 12 months ago	15%	16%	19%	20%	17%	21%

[120] Substantial amounts of work has been done on the effectiveness of mandatory disclosure obligations in particular contexts. See, for example, Report 632 *Disclosure: Why it shouldn't be the default* – a joint report by ASIC and the Dutch Authority for the Financial Markets (AFM).

[121] See the Creditsmart Consultant Hub, designed to be an easy point of reference for those who assist individuals, such as financial counsellors or CP frontline staff.

[122] Source: CreditSmart/YouGov research, 2019-2023.

No, I've never checked my credit report	57%	53%	52%	45%	38%	37%
Don't know	Excluded	Excluded	Excluded	5%	5%	3%

Arca has considered the effect of consumer understanding in the context of the other Issues Paper questions and the various recommendations included in our submission. We believe that some of these changes could support increased consumer understanding by improving the design and operation of the system. For example:

- increasing the consistency of data held by CRBs could reduce consumer confusion about why their credit reports differ (and also reduce the risk that individuals do not see all of their information if they only obtain a credit report from one CRB): see our response to question 4.5 and 9.5.
- enhancements to the dataset can address common points of confusion for individuals, such as around the name of the CP (where a 'brand' field might help with white-labelled or complex products) or the effect of old enquiries (where a shorter retention period could help with enquiries the individual may not recall): see our response to question 5.2.
- other work underway, such as in respect of explanations around financial hardship information, promote consumer understanding by ensuring individuals receive consistent information at the time when it is most useful for them: see our response to question 5.5.
- Stronger regulation of credit repair to reduce the misinformation provided to consumers about their credit reports: see our response to questions 6.4 and 6.6.

6.2 How can credit reports be made more user friendly, accessible and easy to understand for the typical consumer?

Arca supports credit reports being as user friendly and accessible as possible.

To that end, in 2019, Arca conducted a piece of work intended to improve the visibility and consistency of free credit reports offered by CRBs. Areas of focus included the visibility of free reports, the processes through which those reports could be obtained, identity verification requirements and information consistency. Through this work, we developed a set of principles for free credit reports. Those principles are:

- A free credit report button/link should be clearly visible for individuals on the home page of each CRB's website.
- CRBs should produce a standalone webpage or explanatory guide for explaining the information in a credit report. No product selling options should be included on that page, and it should be clear that any "opt-in" elements are optional, and that there are no additional conditions that must be satisfied before a request for a free credit report can be processed.
- Free credit report should be in name of CRB and not another brand; Individuals are often told to check Equifax, Illion and Experian for their credit reports, using other brands may be confusing.
- The process for verifying an individual's identity before providing a copy of their credit report:
    - Should be no more onerous than the processes implemented by each CRB's "credit score" websites;
    - Should allow for online requests; and
    - Should include Identity verification options beyond the individual's drivers licence or passport, in order to improve accessibility for individuals without these documents,
- The process through which an individual can obtain their free credit report should be mobile friendly/responsive.
- The turnaround times for free credit reports should be as fast as the turnaround times offered on credit score websites (i.e. same day responses).

- CRBs should provide call centre support for correction process and education on the information in a credit report.

Additionally, the 2021 CR Code Review considered issues around credit reports and access to information. Of note:

- That review considered whether individuals should be able to obtain copies of all three credit reports by making a single request, but declined to propose such a measure due to the need for identity verification by each CRB. Instead, the review proposed that CRBs provide information to individuals on how they can obtain credit reports from other CRBs;[123] proposed CR Code amendments which would impose this requirement are under consideration by the OAIC.[124]
- That review considered the accessibility of credit reports for all members of the community. Based on feedback that some individuals may have trouble accessing credit reports digitally, the review proposed that CRBs be required to provide physical copies of credit reports on request.[125] Arca understand that all CRBs offer hard copies on request now. Proposed changes to the CR Code which would require CRBs to offer a non-online means for requesting a credit report, and require hard copy provision of a credit report on request, are under consideration by the OAIC.[126]

Arca also notes that some of our recommendations in this submission may indirectly improve the interpretability of credit reports. For example, measures that incentivise increased participation in comprehensive credit reporting, and increase the consistency of data held by each CRB, should make credit reports more complete and consistent. This may:

- foster an increased understanding of the information that is present on a credit report (i.e. as CPs are acting more consistently); and
- reduce consumer confusion about differences in their reports.

6.3 Can the following arrangements be improved to better protect consumers at reasonable cost:

- **correcting a credit report;**
- **placing a ban on accessing a credit report;**
- **making and addressing a complaint;**
- **credit reporting notification framework;**
- **protections for victims of financial abuse and family violence?**

We address each of the arrangements in turn below.

Corrections

The Privacy Act contains a robust legal framework enabling individuals to seek correction of their credit information. The OAIC has published **guidance on those obligations**, but, in general terms.

- **Obligations to correct information:** CRBs and CPs are required to take reasonable steps to correct information:
    - if they are satisfied that the information is inaccurate, out-of-date, incomplete, irrelevant or misleading for a purpose for which it is held (I.e. correction on their own volition or following notification from a CRB or CP): see s20S and s21U of the Privacy Act; and
    - in similar situations as above but upon the request of the individual: see s20T and s21V.

[123] Proposal 32 of the 2021 CR Code Review Final Report, and the discussion at pages 89-90.
[124] See Arca 2023 CR Code Application, pages 43-44.
[125] Proposal 33 of the 2021 CR Code Review Final Report, and the discussion at pages 90-91.
[126] See Arca 2023 CR Code Application, pages 44-45.

- **Steps that must be taken in response to a correction request:** Paragraph 20.4 of the CR Code requires CRBs and CPs to determine whether the information needs to be corrected as soon as practicable. Where they determine that information needs to be corrected, the reasonable steps requirements in the Privacy Act are satisfied if they:
    - correct the information within 5 days (if in response to an individual's request) or otherwise as soon as practicable;
    - take reasonable steps to ensure that any future derived information is based on the corrected information; and
    - take reasonable steps to ensure that any derived information based on the uncorrected information is not disclosed or used to assess creditworthiness.
- **Additional mechanism for defaults outside the individual's control:** Paragraph 20.5 of the CR Code sets out a mechanism for the correction of certain default information where the overdue payment occurred because of the unavoidable consequences of circumstances beyond the individual's control.
- **'No wrong door' approach:** The collective effect of the laws around correction requests is that the individual can make a correction request to any CRB and CP that holds credit information about that individual. That party is then required to consult with others in the system as needed to make a decision on that request within the statutory time period.

It is important that there are mechanisms to allow for the correction of credit reporting information. Information which is incorrect can harm individuals, limiting their ability to obtain further credit, and disrupts the operation of the credit reporting system, inhibiting its primary purpose of removing information asymmetries. The corrections processes are overseen by the OAIC.

Following the 2021 CR Code Review, Arca has applied to the OAIC to vary the CR Code to improve the operation of the provisions around corrections by:

- **Making it easier to correct multiple instances of incorrect information stemming from a single event:** including by making clear that a correction request can relate to multiple pieces of incorrect information, and in the case of correcting enquiries stemming from a fraud event, requiring CRBs and CPs to consider certain matters before requesting collecting or requesting information from the individual (to reduce the need for the individual to re-tell their story)
- **Expanding the mechanism for corrections due to circumstances beyond the individual's control:** To make clear that domestic abuse is such a circumstance, to allow these requests to be made direct to a CP and to allow for these corrections to be made for more kinds of credit information.[127]

These proposed variations respond to Proposals 37, 39, 40 and 41 of the 2021 CR Code Review.[128] Arca's application for variations to the CR Code – including the proposed variations that improve the framework for making corrections – is under consideration by the OAIC.

Arca notes that rights for corrections of credit information have also been considered in other jurisdictions, such as the United Kingdom. In that jurisdiction the FCA has proposed industry-led remedies which could mirror aspects of the Australian framework (in that once a correction is made by one party, within a set time period, the effect of that correction flows through the rest of the credit reporting system).[129] It is important to note however that the Australian and United Kingdom credit reporting systems are different and those differences may affect e.g. the volume of errors in each jurisdiction. For example, Australian CPs comply with the ACRDS which simplifies and standardises the provision of information to multiple CRBs from a single extract (which may support additional consistency of data).

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[127] Arca 2023 CR Code Application, at pages 45-52.
[128] 2021 CR Code Review Final Report, at pages 97-105.
[129] Market Study MS19/1.3 *Credit Information Market Study Final Report* at paragraphs 6.62-6.81 on pages 86-91.

Finally, we note that significant issues have arisen with correction requests from credit repair firms. Arca recommends changes to the regulation of credit repair firms to address those problems: see **Recommendation 26** and our responses to questions 6.4 and 6.6 for further detail.

Credit bans

Issues with the credit ban process set out in the Privacy Act have been considered in other contexts, including the 2021 CR Code Review, which heard concerns that the initial ban period of 21 days is insufficient to protect potential victims of fraud.[130] As an interim solution, that review proposed an 'automatic extension' mechanism for credit bans. At present credit bans can be extended; the uniform practice amongst CRBs is that ban extensions run for 12 months.

Problems with credit bans

Since the 2021 CR Code Review report was released, there have been numerous large-scale data breaches. These events have led to very significant use of the credit ban provisions, which has highlighted shortcomings with the current framework. In particular:

- **Bans add significant amount of friction to the system**. Although an individual can place (or extend) a ban across all three CRBs with a single request, the individual must contact each CRB to have the credit ban removed. This step is necessary due to the identity verification steps that the CRBs must take before removing a ban (i.e. to ensure it is not a fraudster requesting the ban be removed). Members have informed us that individuals also tend to forget that bans are in place and then subsequently apply for credit. As the application for credit will be rejected because of the ban, this then leads to urgent requests to have the ban(s) removed, adding friction and work for all parties involved.
- **Bans place all the onus on the individual to take action to protect themselves**. Individuals who do not place a ban are unprotected in response to e.g. a large-scale data breach event. If only a limited number of individuals place bans, then the economy-wide effect of the credit ban as a protection tool is in turn limited also.
- **Bans stop the use of credit reporting information for credit management purposes**, exposing individuals to harm. For instance, CPs cannot use that information to assist the individual to avoid a significant risk of default, even though there is negligible fraud risk associated with that conduct. This has flow-on implications for individuals (who are more likely to suffer financial harm) as well as default rates and credit losses, and, if bans occur at scale, the effective operation of the credit reporting system.
- **Bans are only effective where a CRB holds information about an individual.** This means that individuals with information on a single CRB only receive partial protection. Sophisticated fraudsters could seek to exploit these gaps thorough making applications to CPs they know use CRBs with less complete credit information holdings.
- **Bans are currently the only way that the individual can notify a CRB that they have been affected by data breach event.** Other services, such as alerts, only inform the individual after there has been activity on their credit file.
- **Individuals may not receive consistent advice when a data breach occurs** (i.e. some companies may encourage them to place bans on their credit report, others may not). These differences could then affect individuals' behaviour, affecting the protection afforded and the operation of the system as a result.

For the purposes of its 2023 CR Code Application, Arca sought to understand changes in consumer practices since the large-scale data breaches of late 2022. Information from CRBs indicated that there was:

[130] 2021 CR Code Review Final Report, at pages 80-83.

- a large increase in the number of credit bans being placed since September 2022 (which coincides with high profile data breach events);
- very significant increases in both the number and proportion of individuals who are extending a credit ban rather than letting the ban lapse after 21 days; and
- very significant increases in both the number and proportion of individuals who have manually removed a ban – both within the original 21-day period, and once a ban has been extended.

This information highlighted that:

- the interim automatic ban extension measure may not be necessary, given that the recommendation stemmed from concerns that individuals were not extending bans (i.e. there was legitimate evidence that consumer practices had changed);[131]
- the increase in the proportion of individuals seeking to remove a ban was evidence of the friction in the system our Members had observed – issues which would potentially exacerbate further if bans were automatically extended.

Potential solution – a fraud flag

Arca considers that the issues with credit bans are significant, and require law reform that:

- provides greater protection to individuals (including those individuals who do not take action in response to e.g. a large-scale data breach)
- creates less friction than credit bans; and
- allows credit management practices to continue, to ensure individuals receive appropriate support from their CPs.

A solution to this problem is to create a fraud flag on an individual's credit file. The fraud flag would be present where the individual has been a victim of identity theft or a large-scale data breach. The flag would appear to CPs when they make an information request, and would trigger obligations on those CPs to take additional steps to verify the identity of the person applying for credit.

This could work as follows is as follows:

- Organisations that have had a data breach incident already have mandatory data breach obligation to notify the OAIC.
- The OAIC (or, if desirable, some other entity notified at the same time as the OAIC) assesses whether the data stolen is "significant" i.e. sufficient information has been stolen that new bank account could be created, or to support an application for a new credit product.
- If the data stolen is 'significant', the individual's name and details would be entered in a fraud register held by the OAIC/entity conducting the assessment, and then passed on to the CRBs.
- The CRBs would then place the flag on the affected individual's credit file.
- CRBs would treat placing the flag as a correction request, and notify other participants in the system (e.g. relevant CPs).
- The flag allows individuals to apply for credit but would serve as a notification to CPs that they need to do take additional steps to verify the identity of the individual if they apply for credit.

Such a system would have the following advantages

- Significantly less friction than a credit ban (i.e. individuals do not have to request that protection be removed before they can apply for credit);

[131] Arca did not ultimately propose changes to the CR Code to allow for the automatic extension of bans. Further information is available in the Arca 2023 CR Code Application, but in short the changes in consumer behaviour and need for law reform around bans generally were the main reasons behind that decision. The application is under consideration by the OAIC.

- The onus is not entirely on individuals to take action to protect themselves – noting that this should increase the economy-wide level of protection provided;
- Credit management activities can continue;
- Complex processes supporting the current ban framework (e.g. the passing-on of ban requests between CRBs) would be utilised much less frequently.

We see this as a complementary tool to the Government's Credential Protection Register (CPR). The CPR mobile app will allow an individual to be notified, in real time, if someone is using their identity without their consent (i.e. based on a DVS check).[132] DVS checks are not always required for CPs who know their customer already, so in this instance, individuals may not always receive notifications relating to fraudulent credit applications. Additionally, the CPR app is effectively an opt-in tool, requiring individuals to download the app and then act on the alert – by comparison, the fraud flag proposal would not require the same degree of action by individuals.

Recommendation 22

The Review should recommend that a fraud flag be created to take the place of credit bans in the context of large scale data breaches. Fraud flags would:

- **be passed on to CRBs by a central party responsible for determining whether the data stolen was significant (i.e. could support an application for a credit product or bank account);**
- **require CPs to take additional steps to verify the identity of the individual when subsequent applications for credit are made (and in doing so protect the individual without requiring them to take action); and**
- **allow credit management activities to continue.**

We note that if this recommendation is not adopted, or if credit bans are retained for other purposes, then the placing of a credit ban should not prevent a CP from undertaking credit management activities, such as seeking to collect overdue payments, or receiving alerts on the basis that the individual is at significant risk of default.

In the United Kingdom, the FCA proposed the creation of a similar concept – the 'credit freeze marker' – which an individual could place on their credit file to indicate that they do not wish to be accepted for any credit product. After explicit consideration the FCA concluded that the credit freeze marker should only apply to credit origination (i.e. decisions on applications), not customer management.[133]

Recommendation 23

To the extent that credit bans remain a component of the credit reporting system, a credit ban should not prevent a CP from receiving and using credit reporting information solely to:

- **collect overdue payments; or**
- **assist the individual to avoid defaulting on their obligations under the credit.**

We note the earlier discussion in the context of the 2021 CR Code Review about the appropriateness of the 21-day initial ban period. We note that if Recommendation 22 above is not adopted, or if credit bans are retained for other purposes, then we would agree that a 21-day period is too short.

Recommendation 24

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[132] *Mobile app to protect identity credentials from cyber crooks* (Media Release, 5 May 2024).
[133] Market Study MS19/1.3 *Credit Information Market Study Final Report* at paragraph 6.117 on page 99.

To the extent that credit bans remain a component of the credit reporting system, the initial period for a credit ban should be longer than 21 days.

Complaints

We are unaware of significant issues with the complaints framework, and continue to support the operation of that framework: see our response to question 6.5.

Notifications

The topic of notifications was considered in detail in the 2021 CR Code Review.[134] That Review noted:

- some parties can incorrectly believe that consent is needed before information can be disclosed to a CRB. This is not the case – the requirement in the Privacy Act and the CR Code is for individuals to be notified. We observe that we have seen instances of this confusion even from professional parties to engage with credit reporting and disputes about credit reporting topics on a regular basis.
- Interim changes to the CR Code, ahead of this Review, should be considered to provide further clarity around the notification obligations.

Work to date on notifications generally

Arca considered the notification framework in detail when putting together its 2023 CR Code application.[135]

The evidence Arca received through the process of developing our application suggested that some CP disclosures were complicated, but that individuals may not engage with the disclosures in any event because they are being provided at a time where they receive numerous other documents that may be a higher priority (and where the individual's overall priority is likely obtaining credit). Additionally, confusion about enquiries was a key issue, which can be heightened particularly where the application the enquiry related to was declined, the enquiry occurred some time ago or the CP Name associated with the enquiry was not recognised by the consumer (i.e. due to white-labelling or complex arrangements).

Arca considered adding an additional disclosure requirement to the CR Code, which would have required CPs to provide a short, prominent statement about credit reporting and enquiries.[136] However, the feedback on this requirement was mixed – there was significant reservations about the effectiveness of more disclosure from numerous stakeholders, and feedback that the costs of changes would greatly outweigh any potential benefits.

Ultimately, Arca proposed the following:

- A new provision in the CR Code which makes clear that which states that, in order to comply with the notification requirement in section 21C of the Privacy Act, a CP does not need to obtain the individual's consent to the likely disclosure;
- A new version of the list of 'notifiable matters' (i.e. matters that a CP must notify, or otherwise make the individual aware of) that is tailored to disclosures which are soft enquiries; and
- Flow-on changes to the standard list 'notifiable matters'.

Arca intends for these proposed changes to be supported by any necessary enhancements of its CreditSmart website to help address consumer confusion about enquiries. This work is ongoing: see our response to question 6.1 for more information about the CreditSmart website and Arca's work improving

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[134] 2021 CR Code Review Final Report, in particular the discussion and proposals at pages 78-80.

[135] See Arca 2023 CR Code Application, pages 32-35, all of which is highly relevant to the holistic review of the notification framework the 2021 CR Code Review suggested should take place through this process.

[136] Arca's public Consultation Document ahead of its CR Code application outlines the proposal in detail at pages 20-21. See also Arca 2023 CR Code Application at page 33.

consumer understanding. Arca's application for variations to the CR Code – including the proposed variations mentioned above around notifications – is under consideration by the OAIC.

Notifications in the context of credit bans

The 2021 CR Code Review also proposed that individuals be notified of attempts to access their credit information when a credit ban is in place.[137] Arca has applied to the OAIC to vary the CR Code so that it includes provisions to this effect.[138]

The proposed provisions would require CRBs to offer a ban notification service free of charge to individuals who place a credit ban. If the individual opted into receiving notifications, the CRB would need to notify them of information requests that are unsuccessful because of the prohibition on use or disclosure of credit information when a credit ban is in effect. Individuals who wish to receive notifications would need to satisfy the CRB's identity verification requirements, provide their contact details and consent in writing to the use of their credit reporting information to provide the notifications. The proposed provisions would have a 12 month transition period to provide time for CRBs to make the systems changes necessary to offer such a service.

Arca's application for variations to the CR Code – including the proposed variations relating to notifications in the context of credit bans – is under consideration by the OAIC.

Other proposals – CP notification requirements and threshold amounts

Some stakeholders have proposed that CPs be required to notify individuals when they are reporting missed payments (i.e. negative RHI) about that individual.[139] The purpose of the notification would be to inform the individual of the information being disclosed and its meaning.

It's important to note that CPs already contact individuals who have missed payments. This is a regular part of handling missed payments; CPs wish to understand the individual's situation, determine whether assistance is needed and to attempt to collect the amount owing. Where the individual is already being contacted by the CP, it is unclear to us how an additional contact point could meaningfully assist. Rather, additional contact could add to lead to the individual feeling overwhelmed or harassed, and may draw attention away from the support the CP can provide and/or the need to make the payment if possible.

We are aware of limited instances where the individual has made the significant majority of their payment, but unintentionally underpaid the amount owning (e.g. accidentally only paid $126 of a $129 payment, due to mis-reading the amount due). In such cases, the unpaid amount may be below the collections threshold that trigger the CP's contact with the individual; as such the relevant person may be unaware of the small amount outstanding for a significant period of time.

Where not rectified, this could lead to multiple instances of RHI = 1 being disclosed to a CRB (i.e. indicating the individual is one payment behind for multiple months). Stakeholders which have called for a notification requirement for missed RHI, have pointed to this type of situation to support that call.

We consider, however, that solving the underlying problem (i.e. small, unintentional missed payments leading to RHI of 1 for the relevant payment) would be a better solution for the individual than providing a notification. In simple terms, the law could provide that if the payment is substantially made and the small amount owing is so small that it is below the CP's threshold to collect, the RHI should reflect that the individual is up-to-date on their payments (rather than receiving a notification to the effect that they are not). The law is currently silent on this point, and there is not a consistent practice across CPs or processes (i.e. collections, RHI reporting or late fees).

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[137] 2021 CR Code Review Final Report, pages 87.
[138] See Arca 2023 CR Code Application, pages 40-43.
[139] This requirement was suggested by consumer stakeholders when Arca consulted when developing the 2023 CR Code Application.

Recommendation 25

The law relating to RHI should allow for an individual who has made the vast majority of a payment (such that any underpaid amount is below the CP's threshold for attempting to collect the money owing) to be treated as 'up to date' (i.e. as though they have met their monthly payment obligations), provided that this is otherwise consistent with the CP's treatment of that customer for other collections-related purposes. How this is given effect to (e.g. whether it is a set amount or an amount determined by the CP based on principles in the law) should be subject to further consultation.

Other proposals – CRB notification requirements and threshold amounts

Some stakeholders have proposed that CRBs be required to notify individuals when they receive a request for that individual's credit information (i.e. an enquiry about that individual).[140]

We note that such a service could not be offered on an automatic basis – CRBs do not store contact details for individuals. Arca faced this issue when designing notifications for individuals who have placed a credit ban under the CR Code; this and other limitations required the service to be offered only on an opt-in basis. In this context its effect may therefore be limited – individuals who actively choose to opt-in to notifications about enquiries may also be those least likely to be confused about subsequent enquiries on their credit report.

More generally we note that confusion (and correction requests) about enquiries appears to stem from a mix of factors, each of which may be better solved in other ways:

Cause of confusion	Issue with notification as a solution	Potential better solution
Discrepancies between the CP name associated with the enquiry and the name the individual recognises	If the cause of the confusion is that the individual doesn't recognise the relevant name, a notification (with that unrecognised name) will not solve the confusion.	Adding a brand field to CCLI to allow greater visibility of the brand the individual recognises and cater to e.g. white labelling or complex models: see **Recommendation 8**.
The fact that the enquiry happened a long time ago (and has been forgotten by the individual – particularly where it did not lead to further credit)	If the enquiry has been forgotten, then likely the notification received when the enquiry is made will also have been forgotten by the later point in time when the confusion arises.	Consideration of whether a shorter retention period for enquiries, such as three years, might be more appropriate: see **Recommendation 20**.
Confusion – potentially contributed to by credit repair firms – that the enquiry isn't valid because the individual did not provide consent to the disclosure of their information.	It is unclear how a notification will overcome this confusion	Enhanced regulation of credit repair firms to prevent harmful practices: see **Recommendation 26**. Additionally, refined and improved messages about the notification framework may assist, and an express provision in the CR Code stating that consent is not required should

[140] Such a proposal was raised by consumer stakeholders when Arca consulted when developing the 2023 CR Code Application.

		make it easier for CPs to respond to these requests.

We also note that consumers who consider they are at risk of fraud could place a credit ban and, if the OAIC approves Arca's application for variation of the CR Code, elect to receive a notification through that process.

Reducing confusion and addressing issues

In respect of the notification framework, Arca's views are as follows:

- **The notification requirement in section 21C is appropriate**. In particular, it is critical to the operation of the credit reporting system that this is not a consent requirement (i.e. individuals should not be able to obtain credit but prevent the disclosure of their information to a CRB). The system's function is predicated on the availability of information – allowing individuals to opt out will significantly limit the system's ability to remove information asymmetry (noting that individuals with poor history and/or no intention of repaying debts will be the ones incentivised to withhold consent).
- **There are a range of targeted solutions which help to reduce specific issues that drive consumer confusion.** For instance, adding 'brand' to CCLI would make it easier for individuals to link an enquiry with the CP name they recognise. Reducing the retention period for enquiries could resolve some confusion about the effect of older enquiries on creditworthiness, as well as reduce the likelihood that the individual sees an enquiry about an application they have forgotten. Substantial reforms to the regulation of credit repair firms could prevent harmful practices (as well as mitigate messages that credit information such as enquiries are 'bad' and need to be removed). See Recommendations **8**, **20** and **26** for more information
- **Efforts to improve consumer understanding and awareness of credit reporting should continue**. Since 2018 Arca has operated the CreditSmart website for this purpose: see our response to question 6.1 for further information.

Domestic abuse

Arca and its Members have recognised for some time the significant impact that domestic abuse can have upon an individual's relationship with credit and the credit reporting system. We also acknowledge that more must be done to assist victims and victim-survivors when they and their representatives interact with these systems.

Arca has been actively working to understand and respond to the issues raised by domestic abuse. Our work, and our view on potential next steps, are set out in our submission to the Parliamentary Joint Committee on Corporations and Financial Services' **inquiry on the financial services regulatory framework in relation to financial abuse** – that document (and the annexure to it) accompany this submission.

6.4 Should additional consumer protections or other regulatory provisions be applied to credit repair services?

The licensing of debt management firms by ASIC in 2021 was a positive first step in regulating the credit repair sector. However, Arca's view is that the application of the broad general conduct provisions under the National Credit Act is an insufficient regulatory response to the activity of the credit repair sector and the harms it creates. Specific rules are required, consistent with the model proposed by the University of Melbourne in 2015.[141]

[141] See Ali, O'Brien, Ramsay, A quick fix? Credit repair in Australia (2015) 43 *Australian Business Law Review* 179.

Arca's view is that credit repair sector in its current form creates consumer harm (which far outweighs any benefit) and this, in turn, is detrimental to the operation of the Australian financial system. We believe this view is shared by many stakeholders.

Issues created by the credit repair sector

Credit repair is a service which operates on the premise that an individual's credit report is 'repaired' or 'cleaned' by removal of any possible negative information, and therefore the individual can better access credit or other services. If credit reporting information meets the requirements of the Privacy Act to be "accurate, up-to-date and complete", the information should not be corrected. While removal of incorrect information is entirely appropriate, CPs and CRBs have received frequently receive correction requests from credit repair firms that they consider are not based on a genuine belief that the information is inaccurate, out-of-date or incomplete.

Credit repair companies charge fees upfront (i.e. not only if they succeed). To the extent individuals are charged without a legitimate and reasonable prospect of success, the credit repair industry is receiving a fee for a valueless service. Even when they may have legitimate grounds for removal or correction of information, they are charging a significant fee for a service the individual could perform themselves, or receive from elsewhere, for free.

In the past, credit repair services have focused on seeking the removal of default information, bankruptcy and judgment information –negative information likely to affect whether or not that individual can access credit. More recently, credit repair has shifted its business model to focus on credit enquiries, RHI removal and other elements of data (for instance, requiring a limit for a closed account to be updated to 0). In each instance, credit repair companies will seek to characterise the data as 'negative' thus requiring repair, but importantly, also as justifying payment of an exorbitant sum to the credit repair agent. In this sense, the increase in data in the system has only aided the credit repair business model.

Worsening economic conditions such as those created by the cost of living crisis fuel the credit repair sector further. More individuals will be facing financial adversity, and the desire to alleviate their financial circumstances by accessing more credit to 'tide them over'. These individuals will likely find the promise of credit repair and the 'cleaning' of their credit files alluring.

Importantly, feedback from some Arca Members (and anecdotal feedback from external stakeholders such as financial counsellors and those working in dispute resolution) highlights that the DMF licensing regime has had limited effect on the activities of the credit repair sector.

With this background, credit repair firms create the following issues.

Poor practices undermine the integrity of the credit reporting system and the quality of data within it

Credit repair firms often seek removal of any perceived negative information from the credit reporting system, regardless of whether this information is accurate and reported in compliance with the legal obligations.

Anecdotal information from Arca Members suggests that only a small percentage of correction requests made by credit repair prove valid. Nonetheless, credit repair firms place commercial pressure on organisations to remove otherwise correct information. This pressure is particularly effective in situations where the information being disputed (for instance, a credit enquiry) is relatively innocuous, yet the cost of responding to a complaint all the way through the external dispute resolution process is extremely high. For instance, the AFCA case fee alone is between $1,150 to $9,300 depending on the stage of resolution reached, and credit repair firms may seek to prolong the dispute to increase the commercial pressure to agree to the correction irrespective of the accuracy of the information.

Some credit repair firms exploit and mislead vulnerable consumers

Credit repair firms tend to charge a large upfront fee to consumers, which appears to apply based on the presence of negative information on the consumer's credit report; not on:

- whether or not any informed assessment has been conducted which demonstrates the information is incorrect or improperly reported; or
- whether the removal or correction of the information would actually improve the customer's ability to obtain credit.

Credit repair firms will often fail to inform consumers of the free options which exist that would enable that consumer to achieve the same result.[142]

As noted in our response to question 6.3, Arca has particular concern that in situations of domestic abuse, a credit repair agent will provide inadequate support or referrals for a victim or victim-survivor.

Unfounded correction requests place burden on dispute resolution services

Based on Member feedback, it appears that credit repair firms may rely on the premise that the more pressure it can bring to bear on the CP; the greater the likelihood that information will be removed. The result is that credit repair disputes are inherently resource intensive. Information will be drip fed by the credit repair company to the CP and even verification of simple information (such as the correct details for the individual) is not straightforward and may involve multiple follow-up contacts with the credit repair agent.

Additionally, disputes lodged by credit repair tend to 'cover all bases', so a request to remove information will cite all possible grounds for removal of that information (even where these grounds are contradictory), yet not identify the relevant circumstances or indeed how they necessitate or support the removal of the information.

Recent examples of evidence requests made by credit repair and provided by Arca Members include:

- Listing of a single RHI entry information requested the following information:
  - *Application form completed by our client to obtain this loan*
  - *Contract entered by our client, including a privacy statement acknowledging that personal information may be provided to a credit reporting agency*
  - *Evidence of how and when you notified our client about RHI*
  - *The "reporting date" you used to calculate the RHI*
  - *How you calculated the RHI in each month it is listed, after any payments made during that month are considered, and the grace period is considered*
  - *Address history for this account from its inception until the date of the last RHI*
  - *Collection/call notes for this account from its inception until the date of the last RHI*
  - *Statements from the first 12 months of the account's inception*
  - *Statements dated 1 month prior to the first RHI to 1 month after the last RHI*
  - *A copy of the letter's sent to our client advising of the outcome of hardship case/s*
  - *A copy of the Notice of Assignment of the debt (if sold to a debt collector)*
  - *Any other relevant correspondence between you and our client in the 6 months leading up to the first RHI listing to 1 month after the last RHI listing*

- Listing of a credit enquiry:
  - *Does the customer have an active account with (bank)?*
  - *Yes - Has the disputed account been closed? and if so; What date was the account closed?*
  - *If the account is open, could you please provide details of what the account relates to? Has the individual disputed the account?*
  - *If so, what was the outcome?*

[142] Where credit repair does advise the consumer of their ability to seek a correction by contacting a CP directly, this may be included as part of a lengthy disclosure statement – with the bulk of material provided by the credit repair firm emphasising the benefits and success associated with use of their services.

- *Is a correction required to be made to the credit file?*

Members note that the number of credit repair requests can vary – as high as 50% of all correction requests, but for some closer to 10 to 20%. A mid-sized bank whose credit repair figures are closer to 10 to 20% observed:

> It's worth noting that although the numbers seem low, credit repair requests are so much more time consuming as they usually request heaps of documentation to support the declined correction request and then will continue coming back month on month to dispute details and try to find gaps in the evidence provided.

The result will be that progressing these disputes through both internal and external dispute resolution processes will be time and resource intensive.

Credit repair firms can undermine financial literacy and consumer education efforts

The focus on credit repair is to 'clean a credit report' for profit. This supports a view that individuals should focus on cleaning their credit report to gain access to credit, rather than considering what the information on their credit report reveals generally about their credit behaviour and health, and how changing that behaviour can then affect their credit report.

Changing a consumer's behaviour is far more time intensive than the 'quick fix' promised by credit repair – however, this is ultimately a purpose of consumer education and improved financial literacy.

While credit repair continues to promote the 'easy fix' (and experiences a degree of success through the process), it makes it more difficult to deliver a strong consumer education message and improved financial literacy.

Reform required to credit repair sector

The University of Melbourne report on credit repair[143] included a series of recommended reforms, which remain pertinent:

- strict prohibition on the charging of upfront fees;
- a mandatory cooling off period, with a prohibition on charging fees during this period;
- possibly, an ability to only charge fees if the credit repairer successfully amends a credit report;
- enabling individuals to sue credit repairers, and access the National Credit Act's small claims procedure;[144] and
- mandatory disclosure requirements applying to both information on credit repair websites as well as information provided to prospective clients.

Arca's view is that in addition to these recommendations, better regulation could address issues with how credit repair conduct disputes, or could even include specific requirements to obtain adequate information from a client identifying a dispute, and provide that information to the CP or CRB upfront. As noted in the material we have provided about domestic abuse, specific reform should also address the risk of harm to vulnerable consumers, including victim and victim survivors of domestic abuse.

Recommendation 26

The Review should recommend additional reforms covering the conduct of credit repair firms to reduce the harms those firms present to individuals, CPs and the credit reporting system generally. These reforms should place specific controls on the practices of credit repair firms to

[143] See Ali, O'Brien, Ramsay, A quick fix? Credit repair in Australia (2015) 43 *Australian Business Law Review* 179.
[144] See s199 of the National Credit Act.

address incentives to seek unfounded correction requests. Specific consideration should be given to the reforms proposed in 2015 by the University of Melbourne.

6.5 How can the credit reporting complaints framework be improved?

Based on the discussion in the Issues Paper, it is unclear to us whether this question is focused on:

- The framework for complaints in Div 5 of Part IIIA of the Privacy Act and paragraph 21 of the CR Code;
- The framework for corrections of information in sections 20S, 20T, 20U, 21U, 21V and 21W of the Privacy Act and paragraph 20 of the CR Code.

We note that these two frameworks are different (i.e. a correction request is not a complaint, and vice versa).

We are unaware of any significant issues with the complaints framework, and support the general structure of that framework. Importantly, the framework for complaints:

- provides individuals with the ability to make complaints without cost,
- specifies timeframes about the responses to complaints, and
- provides individuals with the right for individuals to access an EDR scheme or complain to the Commissioner if they are not satisfied with the decision made on their complaint.

Our comments on the framework for correction of information are outlined in our responses to questions 6.3, 6.4 and 6.6. In short, there is scope to improve the operation of the corrections framework. Given the importance of corrections (both for individuals affected by inaccurate data and the potential flow-on implications of acceptance of unfounded correction requests on the wider system), this area may be a key topic of interest for regulators administering the legal framework for credit reporting.

6.6 Is the credit reporting corrections process leading to adverse implications for the credit reporting framework (e.g. data reliability)?

Yes. As outlined in our response to question 6.4, unfounded correction requests (i.e. requests to correct/remove accurate information from a credit report in order to 'clean' that report) by credit repair firms are an issue for the credit reporting system. The form these unfounded requests tend to take means:

- **It is burdensome for the CP/CRB to respond** – as the request is often expressed extremely widely and generally, applying to large amounts of information and asking numerous questions, as containing no legitimate rationale about why the information may be incorrect / should be corrected. Additionally, the experience of Members is that the engagement tends to be repeated, with the credit repair firm coming back and requesting more information and/or seeking to draw out the process
- **The financial costs of resisting the unfounded corrected request are significant** – the incentives are such that credit repair firms will frequently choose to take disputes to AFCA, and to prolong those disputes to increase the cost pressures on the CP. The AFCA case fee alone – payable even if the CP wins the dispute – ranges from $1150 to $9300 depending on the stage at which the dispute is resolved
- **The particular information subject to the request can be relatively innocuous for that CP** – even though the 'correction' of the information may degrade the quality of data in the credit reporting system, the data may not be particularly significant for that CP (especially not compared to the burden and financial cost of resisting the unfounded correction request).

When these behaviours occur at scale, there is a meaningful reduction in the quality of data in the credit reporting system, which:

- Places individuals at greater risk of harm, as they may receive additional credit which is not appropriate for them or their circumstances because critical information has been deleted (even though that information was accurate and reported legally).
- Limits the system's ability to overcome the information asymmetry it exists to correct (i.e. the benefits of credit reporting – outlined in our responses to questions 1.1, 3.1 and 4.1 – are not realised to the extent they should be).

We consider that the Review should recommend changes to the regulation of credit repair firms which would improve practices such that these perverse incentives on CPs do not exist: see **Recommendation 26**.

6.7 What is the experience of Indigenous Australians with the credit reporting framework?

Since 2018, Arca has regularly conducted consumer research on attitudes and behaviours in relation to credit. Arca's November 2023 study included a sample of 253 Indigenous Australians over 18 years of age. The data in Arca's study was weighted by age, gender, and region to reflect the latest ABS Indigenous population estimates.

Key findings which may be of interest to the Review are set out below. The figures in parentheses in blue represent the corresponding results for the general population, to allow for easy comparisons.

- 72% (60%) of Indigenous respondents indicated they had ever checked their credit reporting, including 57% (39%) who reported they had done so in the last 12 months;
- 40% (34%) had worries that their personal information may not be private and secure from unauthorised access, scams, data breaches or identity theft, while 29% (19%) report having had problems with their information being compromised by unauthorised access, scams, data breaches or identity theft
- Only 52% (57%) of Indigenous respondents felt that their credit health was under control, with 47% (31%) of Indigenous respondents reported being concerned about their ability to access further credit
- 66% (48%) of Indigenous respondents said that they needed assistance on their loan repayments (e.g. a payment pause, or a reduction in loan repayments) in the last 18 months.

7. Access to and use of credit reports

7.1 Should credit reports be able to be used for other purposes beyond a 'credit purpose'?

The use cases for credit information are generally set out in the Privacy Act (with some detail in the CR Code), and reflect the reasons why the system exists, including to address information asymmetry in the context of credit and to support financial inclusion.

There are a small number of situations where we consider that targeted additional use cases (i.e. permitted uses and disclosures of credit reporting information) would be beneficial additions to the system, supporting good decision making by CPs and good consumer outcomes.

Additional use cases

Disclosures to assist with consumer remediations

CRBs are currently unable to disclose credit reporting information (including identification information) to a CP to assist the CP to remediate the individual, such as in response to a breach of the law or some other regulatory failing). If the individual is owed money by a CP, the CRB is unable to assist the CP to locate that individual, because it is not permitted disclose identification information for that purpose under Part IIIA of the Privacy Act. Enabling disclosures to assist CPs to repay monies owing would reduce the

costs of remediation and increase the likelihood that individuals receive the money they are entitled to. Arca previously raised this issue with the 2021 CR Code Review. [145]

Disclosures of bankruptcies

At present, once bankruptcy information is disclosed about an individual, a CRB is unable to alert other CPs (i.e. those the individual has a relationship with) to that disclosure. Arca's view is that such disclosures should be permitted – doing so would increase the likelihood that all creditors participate in the bankruptcy, and would also serve similar policy grounds as (permitted) alerts about substantial risk of default. Arca previously raised this issue with the 2021 CR Code Review. [146]

Additional use cases

There are a small number of specific other situations where it would be beneficial to allow CPs to obtain updated credit reporting information before making certain decisions in response to a request by individuals.

- Assessing whether a possible hardship arrangement is suitable/sustainable for an individual
- Considering a customer's request to vary the terms and conditions of the loan, such as a move from principal and interest to interest only repayments, or to fix a home loan interest rate.

Both of these situations could potentially be 'credit applications' as defined in section 6R, which would mean that information requests (i.e. hard enquiries) could be available to obtain the information. However, having a hard enquiry appear on the individual's credit report for these purposes could:

- **cause consumer confusion** – noting that there are already issues with consumer confusion about enquiries, and that individuals would not readily assume that asking for hardship or a fixed interest rate is the same as 'applying for credit'
- **affect the quality/predictive power of hard enquiry data** – hard enquiries for these matters could be 'noise' relative to hard enquiries relating to actual applications for new/additional credit
- **incentivise further correction requests including by credit repair firms** – see our comments on this issue in our responses to questions 6.4, 6.5 and 6.6.

For these reasons, the ability to obtain this information should be provided through other specified use cases through the Part IIIA framework.

Recommendation 27

The Privacy Act should be amended to permit the disclosure of credit reporting information by CRBs (and subsequent use by CPs) to:

- **Assist a CP to pay remediation to that person; and**
- **Alert a CP that another CP has disclosed bankruptcy information about one of their customers;**
- **Assist a CP to make a decision on its response to a hardship notice; and**
- **Assist a CP to consider a request for a change to the terms and conditions of the credit contract (such as changing to interest-only repayments or moving from variable to fixed interest rate).**

Note: Arca has also recommended a similar use case for protected increases for low cost credit contracts (e.g. BNPL credit): see Recommendation 18.

Threshold for triggering alerts

[145] See page 40 of Arca's submission (Annexure A) to the CR Code Review, and Proposal 45 from that review.
[146] See page 40 of Arca's submission (Annexure A) to the CR Code Review, and Proposal 45 from that review.

The current threshold at which a CP may receive an alert from a CRB about an individual is where that individual is at 'significant risk of default'.[147] However, we note that regulators increasingly expect that CPs proactively seek to identify possible signs of hardship.[148] By the time that there is a 'significant risk of default', it is increasingly likely to mean that the individual's financial difficulties are significant and well-advanced, which can limit the support options available to the CP.

If the trigger for an alert were set at an earlier time, it is more likely that the CP intervention and support could effectively assist the individual, and more options would be available to the CP for this purpose. Given the sensitive nature of the information and concerns about inappropriate use of alerts, there would need to be strict control and monitoring to ensure that appropriate consumer protections remain in place.

Recommendation 28

The Review should consider whether the current threshold for triggering alerts under the Privacy Act and the CR Code - that an individual is at significant risk of default - should be amended to allow CPs to provide earlier, more effective assistance. Strict controls should remain on the ability to provide alerts for this purpose.

Soft enquiries

The ability to use credit information for certain purposes was relevant to Arca's work to develop a proposed framework for soft enquiries in response to the 2021 CR Code Review.[149] The effect of the 2021 CR Code Review proposal is that the soft enquiries regime would need to rely on the 'information request' architecture within the Privacy Act (i.e. a soft enquiry would be a kind of 'information request' of the kind described in s6R of that act).

During consultation about the development of that framework, Arca received suggestions that soft enquiries be available to pre-fill a subsequent application for credit. Arca's conclusion was that it would not be legally possible to use an information request such as a soft enquiry for that purpose; the reasons for this view are set out in Arca's CR Code application, along with some of the other matters policymakers would need to consider when determining whether pre-filling a credit application with information from a CRB would be appropriate.[150]

Arca's application for variations to the CR Code – including the proposed variations that would give create a soft enquiries framework – is under consideration by the OAIC.

7.2 Should credit reports be accessible to a broader range of commercial entities, such as real estate agents?

- **If so, what consumer protections should apply to these entities' use of credit information and how could this be enforced?**
- **What would be the costs and benefits of expanding access?**

We note the commentary in the CR Code Review Report about third parties such as real estate agents, landlords and employers seeking to access credit information through the credit reporting system.[151] As noted in the CR Code Review, the settings for which parties can access the credit reporting system were considered by the ALRC in 2008; the ALRC did not recommend expansion to include parties such as real

[147] This threshold is set by the combination of the Privacy Act and paragraph 16.2 of the CR Code.
[148] ASIC Report 782 *Hardship, hard to get help: Findings and actions to support customers in financial hardship* (REP 782) at pages 43-44. See also ASIC Report 580 *Credit card lending in Australia* (REP 580) at paragraphs 54-56 and 166-191.
[149] See Proposal 43 of the 2021 CR Code Review Final Report, and the discussion at pages 111-114.
[150] See Arca 2023 CR Code Application, pages 58-59.
[151] See Resolution of Practice Issue 7 of the 2021 CR Code Review Final Report, and the discussion at pages 94-96.

estate agents.[152] As noted by the ALRC, in some overseas jurisdictions, additional parties can access or contribute information to the credit reporting system. The costs and benefits of expanding access would need to be carefully considered in the Australian context.

The CR Code Review report discusses the potential for additional regulatory requirements restricting access to credit information – for instance, preventing real estate agents or landlords from requesting a copy of the individual's credit report. Arca does not have a view on these proposals, but notes that any additional regulatory obligations should apply to whichever parties are causing the issues the regulation is meant to address. In this regard, Arca would not support additional requirements on CRBs intended to ensure that individuals do not request their credit information in order to pass it on to certain third parties. CRBs have no control over what an individual does with their credit report once it has been provided. CRBs do not capture the reasons why consumers ask for their information, and even if they did there is no way to prevent the individual from giving a false reason then providing the information to e.g. a real estate agent or prospective landlord. An attempt to impose requirements on CRBs for in this area could unintentionally limit individuals' ability access to their own information, which would be highly detrimental and inconsistent with building consumer understanding of credit and credit reporting.

7.3 Should non-financial participants such as telecommunications and utility providers be able to contribute repayment history and other positive reporting data?

Arca is strongly of the view that expanding participation in repayment history and other positive reporting to non-financial participants (i.e. CPs who do not hold an Australian credit licence) would significantly improve the operation to the Australian credit reporting system.

This innovation was considered (and not adopted) by the ALRC in its Report 108, with concerns being the potential volume of data that would be reported (and the appropriateness of data security settings) as well as the view expressed by the Telecommunications Industry Ombudsman that there 'are numerous reasons why a customer may not be able to pay their bill on time, many of which do not equate to the customer being a potential credit risk'.

Arca's view is that much has changed since 2008 when this issue was considered by the ALRC. In particular, the telecommunications industry has become subject to far more rigorous requirements to check customers' ability to pay their accounts, and also to provide financial hardship to customers. This has included the introduction of the **Telecommunications (Financial Hardship) Industry Standard 2024** and ongoing changes to the **Telecommunications Consumer Protections Code** (which include upcoming changes to require more checks of a customer's capacity to pay and tighter rules about credit checks, particularly for new customers). These changes reflect that 'credit risk' is relevant and important for telecommunications companies. In 2018, similar reforms to introduce financial hardship obligations were introduced to the energy sector (see the **Australian Energy Regulator Compliance Update**).

The large-scale data breaches which have occurred since 2022 have highlighted the importance of data security, and equally the role the credit reporting system can potentially play in increasing protections where data has been compromised: see our response to question 6.3 on this point. As such while these concerns have increased rather than reduced, data security has become a key governance issue for organisations, and far stronger controls (and innovations, such as the development of the National Credential Protection Register) now exist to manage this issue. CRBs also take significant measures to keep the data reported to them safe – many of which reflect obligations imposed on their prudentially-regulated CP customers: see our response to question 8.2 for further information.

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[152] Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008). See in particular the discussion at paragraphs 54.118-54.137 on pages 1776-1781 about the definition of credit provider and the exclusion of access for other parties.

Arca further considers that there are strong policy reasons to support this innovation: such a reform will benefit consumers and industry for the reasons set out below:

Allowing more CPs to disclose and access RHI and FHI promotes financial inclusion

Telecommunication and utility accounts are typically an individual's first credit account. For younger people, new migrants or other cohorts of individuals who have 'thin' files (i.e. little to no trace of their credit history available at a CRB), these accounts may provide one of the only objective insights into that individual's payment behaviour. Multiple studies[153] have demonstrated the impact that the availability of this data on credit reports would have in promoting financial inclusion for these individuals, potentially making it easier for those individuals to obtain subsequent credit products.

Arca Members have indicated the expansion of RHI to telecommunications and utilities would materially improve their ability to lend to thin file customers. One fintech Member has changed its lending policies to exclude thin file applicants from personal loan applications. This Member has highlighted that the inclusion of RHI data would greatly reduce the impact of this decision. This view is reflected in research undertaken by CRBs on the outcomes of the inclusion of repayment data from telecommunications and utility providers in the New Zealand market; we understand that at least one CRB will be providing information about the financial inclusion benefits that have flowed in that market.

That research confirms consumers are more likely to get access to a personal loan or credit card with the inclusion of this data, then would be the case with its ongoing exclusion.

RHI improves competition between CPs

As noted throughout our submission, access to data improves competition, particularly between larger CPs and their smaller competitors (as larger CPs may otherwise have access to their own proprietary data which provides an advantage over and above small CPs). For non-ADIs particularly who do not possess transaction records for consumers, ready access to sources of data which assist verification of a consumer's payment behaviours is critical.

In this context, and noting the current issues CPs face when attempting to use CDR, the innovation to enable telecommunication and utility to supply RHI as part of the credit reporting system, will have a material impact for these smaller CPs and their verification and lending processes.

RHI assists both financial and non-financial participants meet lending and compliance obligations

RHI data for telecommunication and utility accounts provides an insight into an individual's current behaviours and financial health. While the payment amounts for many telecommunications and utility contracts may be small, they provide a useful barometer. For example:

- individuals who may experiencing financial stress may miss repeated payments on a telecommunications account because they have prioritised paying another debt (such as a mortgage). Without RHI from the telecommunications provider, other CPs that have provided credit to this individual may not be aware of the true state of their financial situation.
- individuals who may be new to credit, but responsible payers, may ensure these accounts are always kept up-to-date – an insight which, if available to other CPs, could significantly help that individual obtain credit in the future.

The information outlined above are valuable for other CPs, including those who operate within the framework of the National Credit Act as well as telecommunications and utility providers. This data is relevant to building a risk profile for a new customer, aids a lending assessment and can potentially put

[153] See Credit Reporting Customer Payment Data: Impact on Customer Payment Behavior and Furnisher Costs and Benefits; and A New Pathway to Financial Inclusion: Alternative Data, Credit Building, and Responsible Lending in the Wake of the Great Recession, both published by PERC.

a CP on notice of possible hardship that individual is experiencing. In this regard we note that regulators generally expect CPs to look for early warning signs of potential hardship, including e.g. missed payments on other products.[154]

Wider access to RHI is consistent with international practice

The inclusion of telecommunication and utility repayment data is commonplace in overseas credit reporting systems: it forms part of the system in New Zealand, the United Kingdom, Canada, United States and South Africa.

Relevantly, in 2018, the New Zealand Privacy Commissioner undertook a review of participation in CCR in NZ, with a focus on what could be done to improve participation.[155] Specifically in respect of telecommunication and utility data, the review noted that uptake of providers participating was low (2 of 20 telecommunication providers, and 4 of 19 utilities providers) although the market share represented by these participating providers was significant (71% for telecommunications and 52% for utilities). The review emphasises that steps ought to be taken to continue to promote participation, noting the inclusion of this data mitigates the problems of "credit invisibility" and credit "catch-22" (where a credit history is needed to access credit) which are experienced particularly by youth, immigrants and low income earners – highlighting the potential financial inclusion benefits mentioned above.

The review report highlighted:

> "Opening a mobile account is perhaps the principal entry into the world of credit for young people. All households will have a utilities account, most presumably being paid in arrears. New Zealand's scheme – in contrast to Australia's – explicitly includes such accounts to seek to ensure that credit active individuals are not rendered invisible in the system simply because they have not yet accessed mainstream bank credit."[156]

As such, Arca strongly considers that the specific requirements that limit access to RHI and FHI to holders of an Australian credit licence[157] should be removed. This change would expand access to RHI and RHI for other types of CPs, such as telecommunications and utility providers and commercial-only lenders (see our response to question 7.5 for further information about the unlevel playing field that some commercial-only CP face at present due to the current restrictions). As outlined above, these changes will significantly support financial inclusion and the operation of the credit reporting system generally.

For completeness, we note that if this position is not adopted, the restrictions on disclosing and accessing RHI should nonetheless be reviewed as, at present, they do not operate appropriately for complex lending models where there is an Australian credit licence covering the provision of credit but the CP does not hold that licence.

Recommendation 29

The requirement to hold an Australian credit licence in order to access or disclose RHI and FHI should be removed.

7.4 Do current access seeker arrangements adequately enable people to obtain appropriate assistance to gain access to their credit reporting information?

Arca notes that at present, the Privacy Act does not distinguish between when an individual accesses their own credit reporting information or credit eligibility information directly (i.e. the individual makes their own request to a CRB/CP for certain information), or when the person does so with assistance from a

[154] ASIC Report 782 *Hardship, hard to get help: Findings and actions to support customers in financial hardship* (REP 782) at pages 43-44. See also ASIC Report 580 *Credit card lending in Australia* (REP 580) at paragraphs 54-56 and 166-191.
[155] Privacy Commissioner (New Zealand) Comprehensive Credit Reporting Six Years On (2018).
[156] Privacy Commissioner (New Zealand) Comprehensive Credit Reporting Six Years On (2018) at page 14.
[157] See s20E(4), s21D(3)(c)(i) and the rules about CP disclosures of credit eligibility information in s21G of the Privacy Act.

third party (an access seeker). A clearer delineation between these situations could provide additional comfort that the arrangements are working appropriately (or could work appropriately with any controls needed around third-party access).

Use of access seeker arrangements was relevant to the proposed CR Code variations Arca has developed to create a framework for soft enquiries. Over recent years, practices have emerged which have become known as 'soft enquiries' whereby CPs and other entities access an individual's credit reporting information, including through mechanisms and structures involving use of the access seeker regime.

In developing a proposed framework for soft enquiries in the CR Code, Arca proposed including integrity provisions. These proposed provisions are intended to ensure the framework achieves the consistency of practices in respect of enquiries that the CR Code Review sought, and also to preserve value in information about hard enquiries (i.e. ensuring that hard enquiries are made before a full assessment of a credit application occurs, so hard enquiry data exists for declined applications). The proposed integrity provisions would:

- Prohibit CRBs, CPs and insurers from being involved in schemes or arrangements that rely on the access seeker provisions to obtain credit reporting information, where it is reasonably likely the information would be disclosed to a CP to assess an individual's creditworthiness;
- Set out the purpose of the soft enquiries framework – to provide the only means for CPs to obtain credit reporting information to make assessments in relation to credit, where those information requests are not widely visible; and
- Prohibit CRBs, CPs and insurers from being involved in schemes or arrangements that have a purpose or effect inconsistent with the purpose of the soft enquiries framework.

Arca's view, as outlined in our CR Code application, is that integrity provisions are needed to ensure consistency of practices across industry and to help maintain the integrity of the credit reporting system (by ensuring the continued meaningfulness of information about 'hard' enquiries is the system). Arca's application for variations to the CR Code – including the proposed variations that would give create a soft enquiries framework – is under consideration by the OAIC.

For completeness, we note that the proposed soft enquiries framework developed by Arca would not affect the ability of financial counsellors, legal representatives and brokers acting on behalf of the individual to rely on the access seeker provisions.

7.5 How is the consumer framework used to support business or commercial considerations and is this appropriate?

The application of the consumer framework to small and medium enterprise (SME) lending depends upon whether the SME lender holds an Australian credit licence or not.

Where the lender provides both consumer and commercial lending, it will hold a credit licence and have the ability to access RHI data in the context of SME credit (for instance, for the individual director or guarantor of the SME). However, if a CP provides commercial only lending, it will be unable to access RHI data for that same SME credit. This legal quirk places small SME lenders at a significant disadvantage when compared to larger CPs, hampering competition. Arca's recommendations that the requirement to hold an Australian credit licence in order to access or disclose RHI and FHI be removed would address this issue: see our response to question 7.3 and **Recommendation 29** for more information.

More broadly, Arca notes the absence of a CCR-type data exchange for SME lending has meant that lenders have more limited ability to obtain objective insights into SME's creditworthiness. A move to CCR for SME lending would improve lending in the SME sector. At a high level, the availability of consistent,

timely and quality data to support lending decisions will drive down the cost of lending, which in turn will bolsters the ability of SME lenders to lend to SMEs, and promote competition between SME lenders.

Arca's further notes that it has previously undertaken a project to identify the path to developing an industry-led framework to enable CCR for SME lending. Resource constraints have inhibited progress of the development of this framework, as it is a significant piece of work. Nonetheless, Arca's view is that it would be preferable for this work to continue within an industry-led setting, noting the success of any framework will depend largely on the extent to which the data exchange accurately reflects the necessary datasets for SME lenders, and also enables consistent, timely supply of this data.

7.6 Should Australians be able to permit foreign credit providers and CRBs to access their Australian credit reports? If so, how should this arrangement work?

We note that individuals could choose to provide foreign credit providers with copies of their Australian credit reports now, in order to support an application for credit in another jurisdiction. We are not aware of there being sufficient demand to for a mechanism to make Australian credit reports available overseas to justify the costs that could be incurred by CRBs in developing a method for providing this information to foreign CPs (potentially including CPs in jurisdictions in which those CRBs do not operate).

The relevant regulatory agencies may also have concerns about how to ensure that the (Australian) credit information is treated appropriately once it is provided to a foreign CP or CRB – particularly if there are jurisdictional issues with enforcing the normal Privacy Act rules about retention, use and destruction of information.

We note the reference in the ALRC report to potential data sharing with New Zealand. This issue has been raised by Arca (including to the FSI and Productivity Commission) driven by a concern that the inability of CPs to access credit information sourced from New Zealand can present a hurdle for them when servicing temporary residents that seek credit in Australia. CPs in Australia that assess new resident credit applications make assessments on information that excludes borrowing behaviour that may be available in New Zealand. Having access to this information would allow CPs to comply more easily with their responsible lending obligations.

This issue has not progressed. In Australia, CRBs are not permitted to share credit information with organisations without an Australian link. In New Zealand, the regulatory framework recognises that information can potentially be shared extra-territorially, but it is unclear the best mechanism which would be allowed to facilitate the sharing of information, or whether or how any barriers could be overcome.

Arca considers there could be merit in further consideration of data sharing with New Zealand, as well as developing a clearer understanding as to the extent to which the regulatory and operational settings will inhibit this data sharing occurring.

7.7 Should foreign credit information from foreign credit providers be able to be included in an Australian credit report?

Differences in the scope of credit reporting systems (i.e. different data fields, slightly different definitions for similar concepts) and differences in retention periods could make incorporating foreign credit information challenging.

There would also be a need to ensure that any foreign credit information was kept up to date. Normally this occurs through obligations on the CPs – such obligations may not be effective for foreign credit information if the relevant CP has no operations or jurisdictional nexus with Australia.

As highlighted in our response to question 5.7, retention periods for credit information vary significantly across jurisdictions. In the context of foreign information being added to Australian credit reports, this could:

- impose costs on CRBs ensuring they comply with those foreign obligations (potentially including obligations in jurisdictions in which they do not operate, depending on the original source of the credit information); and
- create confusion for individuals, especially if information is allowed to be retained for longer than similar (Australian) credit information.

Nonetheless, as mentioned above, we note the issue of data sharing with New Zealand, and highlight that further consideration could be given to this issue.

In any event, we note that individuals who have a substantial credit report from another jurisdiction can manually provide that report to prospective Australian CPs to support their application for credit.

8. Privacy, information security and regulatory oversight

While we acknowledge that Part IIIA is different from more recent regulatory regimes, we disagree with the comment in the Issues Paper that the policy objectives for the credit reporting are similar to those for the AFS licensing, credit licensing and CDR frameworks.

As noted above, the credit reporting regime has distinct policy objectives (enabling the ability of the credit reporting system to operate, setting the parameters of that system, and establishing mechanisms for ensuring that the information within the system is accurate and secure) from other regimes such as the AFS and credit licensing regimes (which are generally about managing the relationship between a consumer and a product provider they have a contractual relationship with, including governing when, where and how products can be provided). We also observe that those regimes generally apply to businesses with a direct, ongoing contractual relationship with an end consumer; CRBs do not have this type of relationship with individuals.

To that end, we believe that the appropriateness of the credit reporting regime should primarily be considered on its own – there is a danger of additional burden, complexity and cost associated with importing obligations or concepts from other regimes without clear evidence that there are problems with the credit reporting regime.

8.1 What improvements can be made to the privacy and security of all information in the credit reporting framework?

As noted in our response to question 8.2, we consider that CRBs and CPs are subject to a range of obligations which collectively form an appropriate response to the need to keep information protected and secure. We are unaware of specific issues which warrant improvement; if such issues are identified, we would welcome the opportunity to consider those issues and respond in detail.

More generally, if there are concerns about the privacy and security of credit reporting information or credit eligibility information, an appropriate first step may be for a relevant regulator examine existing practice, and then determine what improvements, if any, should be made. Any such examination should consider:

- What existing problems any improvements would be intended to solve;
- Why those improvements are the best solution the problems identified; and
- The relative costs and benefits of the proposed improvements.

8.2 Should CRBs and entities accessing credit reports be subject to more explicit information security requirements and oversight?

Arca notes that CRBs are already subject to:

- general obligations to take reasonable steps to protect credit reporting information from misuse, interference and loss, and unauthorised access, modification and disclosure: see s20Q of the Privacy Act
- specific contractual obligations relating to data security – including those imposed on CRBs by prudentially regulated CP clients, which reflect those entities obligations under other legislation
- requirements to conduct independent reviews of their operations and processes to assess their compliance with their obligations – including their obligations under s20Q relating to data security
- information security requirements in other jurisdictions, which we understand from our CRB Members are often rolled-out across their operations in Australia.

We also note that CPs that receive credit reporting information from CRBs are already subject to general obligations which mirror those applying to CRBs,[158] as well as other relevant obligations under legislation administered by regulators such as APRA and ASIC.

We consider that this framework of obligations provides an appropriate response to the need to keep credit reporting information secure. In forming this view we note:

- **General obligations are common**: There are a number of precedents for obligations on businesses being framed in a general way, even in respect of significant risks – for instance, the general conduct obligations in regimes administered by ASIC are general in nature,[159] as are the provisions of the Australian Consumer Law.[160] Other processes such as the Royal Commission into Misconduct in the Banking, Superannuation and Financial Services Industry and the ALRC's review of the Financial Services law have also highlighted the benefits of general obligations or statements in the law with clear purposive effect.[161]
- **General obligations are durable and minimise cost to all parties**: General obligations are durable, as they inherently reflect changes in the tools and systems available to CRBs to ensure information security.[162] We observe that more detailed regulatory obligations would require regular maintenance and upkeep, and a failure to do so could expose CRBs to additional cost and risk.
- **We are unaware of specific concerns about the steps CRBs are taking to keep information secure**: No such concerns set out in the Issues Paper, and to our knowledge have not been raised by other parties. We note the comparative analysis in the Issues Paper, but observe that that reflects different regulatory regimes which apply to businesses with direct contractual relationships with individuals (and therefore larger amounts of extremely sensitive information and substantial ongoing obligations to perform).

We note that if there are concerns about the steps CRBs are taking to keep credit reporting information secure, an appropriate first step may be for a relevant regulator to examine existing practice, and then determine what steps need to be taken. These steps could include additional legal obligations, but depending on the findings other responses may be more appropriate responses to whatever issues emerge. Without this type of examination it is difficult to determine:

- What existing problems any new obligations would be intended to solve;
- Why new obligations are the best solution those problems; and

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[158] See s20Q(2) of the Privacy Act.

[159] See, e.g. s912A of the Corporations Act 2001 and s47 of the National Credit Act.

[160] See Sch 2 to the *Competition and Consumer Act* 2010 and Div 2 of Pt 2 of the *Australian Securities and Investments* Commission Act 2001.

161 See, e.g. Commonwealth, Royal Commission into the Misconduct in the Banking, Superannuation and Financial Services Industry, Final Report (2019) vol 1, pages 493-496 and Australian Law Reform Commission, Confronting Complexity: Reforming Corporations and Financial Services Legislation, Report No 141 (2023) at paragraph 5.62

[162] In this regard we note that the 'steps that are reasonable in the circumstances' for the purposes of s20Q of the Privacy Act likely reflect the technology available to CRBs to protect information.

- The relative costs and benefits of the proposed new obligations.

Please let us know if you would like to receive additional information about the steps CRBs take to keep information secure.

8.3 Is the definition of a CRB still fit for purpose?

The most important function of the definition of a CRB is that it captures all businesses that operate what are commonly understood to be credit reporting businesses. Put simply, a definition that is too wide (i.e. captures additional business/functions) can be easily narrowed through regulations and/or through exemption powers given to the regulator (we believe the regulator should have such powers: see **Recommendation 4**). Conversely, a definition which is too narrow can cause significant issues which are harder to address – a narrow definition could prevent legislative protections from applying, or could prohibit the business from operating entirely, and may be more complex to rectify through delegated legislation.

As acknowledged in the issues paper, the definition of a CRB definition is wide. We believe it does capture all businesses that operate what are commonly understood to be credit reporting businesses, so in that sense it is achieving its most critical purpose. This can be contrasted with various other definitions in the Privacy Act where issues with the drafting or scope are detrimental to the operation of credit reporting system: see our response to question 5.3 in particular.

8.4 Are there any other categories of activities that should be exempted from the definition of CRB?

As acknowledged in the Issues Paper, the definition of CRB is wide. It may be worth considering whether there is a need for exclusions for the following category of stakeholders:

- mortgage brokers;
- other credit intermediaries, such as comparison websites or referrers; and
- intermediaries under the CDR regime.

Arca does not have detailed views about whether such exemptions are necessary. Any exemptions that do need to be made should be drafted with care, to avoid unintentionally exempting/excluding what is commonly understood to be credit reporting businesses. As noted above, the effect of (unintentionally) excluding such businesses from the definition of a CRB would be very significant, and could affect their ability to operate in Australia.

8.5 Should CRBs be required to register or obtain a licence?

We refer to our earlier comments about the similarities between the credit reporting regimes and other financial services regulatory regimes.

Based on those comments, we don't believe that comparisons between the two regimes alone would justify an obligation to licence CRBs. It is not clear to us what problem would be solved by requiring CRBs to register or obtain a licence. In reaching this view we note:

- Unlike other regimes, a licence is not needed before obligations under Part IIIA of the Privacy Act apply.
- To the extent that there is a concern that the regulator may not be aware of every business operating and what they are doing, this would not be solved by a licensing regime. Businesses could operate – and potentially engage in harmful conduct – without being aware they need a licence, and without the regulator being aware of their existence. Creating a licensing regime would not solve this problem.

- A licensing requirement could act as an undue barrier to entry, affecting competition within the CRB marketplace and imposing costs which are likely to be passed on to CPs and ultimately consumers.

If the Review intends to explore whether CRBs should be required to register or obtain a licence, we believe the following questions would need to be answered:

- What problem exists that would be solved by imposing a licensing/registration requirement?
- How would licensing/registration solve the problem identified?
- Would licensing/registration be the optimal solution to the problem? Would other solutions (including self-regulatory solutions or those that rely on the administration of the existing framework) be preferable?
- Would the benefits generated by a licensing/registration framework outweigh the costs (to CRBs, but also to the regulator) created by that regime?

Without answers to these questions, it is difficult to determine why a licensing or registration regime should be considered.

8.6 Should CRBs be required to report data on their activity or compliance to the regulator?

The regulator responsible for the credit reporting regime is best-placed to answer this question, as they would have visibility of the information that they need to administer the law effectively.

We note there are already a range of oversight, reporting and audit obligations intended to give the regulator comfort about the operation of CRBs. Additionally, in response to the CR Code Review, Arca has proposed additional requirements to this effect. In our application to the OAIC to vary the CR Code, we have proposed that:

- CRBs be required to publish additional information about their audit programs; and
- The Commissioner have a power to request copies of audit reports from CRBs.[163]

The purpose of these proposed obligations is to increase transparency and give the regulator and other parties more confidence in the monitoring framework established under the Privacy Act. They have been designed to support the other data publication and reporting obligations in paragraph 23 of the CR Code. More generally, we support a credit reporting system where parties operate with appropriate transparency and oversight, so that those who use and rely on that system (including individuals) have comfort in its operation. The existing settings have been designed with this outcome in mind.

In respect of further obligations, we have the following comments:

- **Reporting will not address lack of awareness of the regime or current operations:** To the extent that these requirements are being considered in response to concerns that 'entities dealing with credit information are not fully aware of their regulatory requirements, or that OAIC as the regulator is not aware of their activities', reporting obligations would not solve those problems. If an entity in unaware of their obligations under the Privacy Act and the OAIC is unaware of their operations, then that entity will not know to report to the OAIC and the OAIC will not know to prompt a report.
  Concerns about the regulator's awareness of conduct within the regulatory perimeter would be best addressed by ensuring the relevant definitions are not unduly wide (unintentionally capturing unrelated conduct) and ensuring that the regulator has sufficient resources to administer the law effectively.

[163] See Arca 2023 CR Code Application, pages 22-24.

- **Information could be requested now:** If there is information that the regulator requires, it is open to them to ask CRBs for this information now. If there is some legal impediment or resistance to information being voluntarily provided, then that *could* indicate that some further requirement is necessary. However, those circumstances would be key to the rationale for a new reporting obligation – they should not be presumed to exist.
- **The basis for any new obligations should be made clear:** Any new reporting obligation should be supported by a clear explanation of the policy basis for the obligation – put another way, it should be clear:
    - what problem the reporting is trying to solve;
    - why reporting is the best solution to that problem; and
    - the benefits that flow from reporting outweigh the costs – noting that costs on CRBs would be passed on to CPs and ultimately consumers (i.e. the obligations meet the standard cost/benefit analysis requirements associated with Government policymaking).

Without answers to these questions, it is difficult to determine why reporting obligations would be necessary.

8.7 Is the level of compliance enforcement with regulatory obligations of credit reporting participants and the enforcement powers of regulatory authorities sufficient?

The areas where a regulator chooses to conduct compliance or enforcement work – and how much work is conducted – are matters for those regulators. The regulators in question are best placed to identify where, and how much, compliance work should be conducted (including relative to those regulators' other priorities). We do however note that effective compliance and enforcement by regulators is an important part of the administration of the law. Regulators taking appropriate supervisory, compliance and enforcement action can:

- clarify the meaning and effect of relevant obligations, as well as the regulator's expectations;
- ensure that poor conduct is responded to (and, where necessary, results in punishment); and
- uplift practices across other participants, including creating a deterrence effect where enforcement action occurs.

However, we note our earlier observation that regulators with responsibility for credit reporting appear to be under-resourced: see our response to question 3.6. Lack of resources may have affected the amount of work regulators have chosen to do in respect of credit reporting. We observe that since the commencement of Part IIIA, the supervisory and enforcement work undertaken by the OAIC has been relatively limited – we are aware of handful of disputes which have progressed through to Commissioner Determination. The absence of ongoing, targeted compliance actions can reduce overall confidence in compliance by CRBs and CPs.

We have no comments on whether or not the enforcement powers of the regulators are sufficient – that is a matter for the relevant regulators.

9. Mandatory credit reporting

9.1 Has mandatory comprehensive credit reporting increased the voluntary participation of credit providers and the voluntary supply of credit information in the credit reporting system?

It is difficult to determine whether the mandatory credit reporting regime had any effect on voluntary decisions by others to participate in comprehensive credit reporting. The information Arca has available suggests that at most, the mandatory regime had a negligible effect on voluntary participation. In this regard it is important to differentiate between:

- the prospect of mandatory credit reporting – as noted in the FSI[164] and by the Productivity Commission,[165] and the 2017 Government announcement that the Government would require the ANZ. Westpac, CBA and NAB to participate;[166] and
- the actual effect of the mandatory credit reporting regime in Part 3-2CA of the National Credit Act, which commenced in February 2021.

The prospect of future mandatory participation could have influenced decisions by CPs. For instance, the large CPs mentioned above could have concluded that they would need to participate, so should commence doing so. Other CPs may have then been incentivised to participate to access CCLI and RHI disclosed by those larger institutions. It is important to note that these benefits, if they occurred, would have been realised without imposing a mandatory regime.

Arca's **Credit Data Fact Base** (**CDFB**) provides information about the implementation of comprehensive credit reporting. An updated version of some of the information from the CDFB was included in the Issues Paper. We note that there was a significant increase in the amount of participation in comprehensive credit reporting by December 2019, when the legislation for the mandatory credit reporting regime was introduced into Parliament. Version 8 of the CDFB, published in November 2019, indicated that 85% of all accounts for the major product categories had CCR data in public mode – an increase from 9% as at March 2018.[167]

Additionally, as noted in the CDFB, participation in comprehensive credit reporting takes effort by CPs, including system changes, data testing and quality assurance with CRBs, and the signing of the PRDE. As such:

- further uptake of comprehensive credit reporting was already committed to by November 2019 (as noted in the Version 8 of the CDFB) and was therefore not influenced/incentivised by the mandatory regime; and
- the work to support the data that was already in the credit reporting system by late 2019 had occurred over a substantial period of time before that date.

Arca does not have information about the reasons why those who have decided to participate in comprehensive credit reporting after the creation of the mandatory regime made those decisions. However, as described above, very significant levels of participation were occurring before the mandatory regime was introduced into Parliament (including participation by each of the CPs subject to that regime). As such it is unclear to us whether the mandatory regime had any effect on participation at all – at best we suspect that any effect was negligible relative to the incentives to participate given the information already in the system.[168]

Finally, we note that the Productivity Commission considered that if participation in comprehensive credit reporting grew during process of developing/legislating a mandatory regime, that regime should be 'suspended' and not actually enacted.[169] Unfortunately this did not occur.

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[164] Financial System Inquiry: Final Report (2014) pages 190-192.
[165] Productivity Commission, *Data Availability and Use*, Report No 82 (2017), pages 228-231.
[166] *Mandating Comprehensive credit reporting* (Media Release, 2 November 2017).
[167] See Arca, Credit Data Fact Base Volume 8 (2019), page 3. These figures exclude the BNPL sector.
[168] The Financial System Inquiry: Final Report (2014) noted at page 192 that the benefits from participating in comprehensive credit reporting grow as more CPs participate.
[169] Productivity Commission, *Data Availability and Use*, Report No 82 (2017), pages 230. In particular: "Moreover, it is recognised that the target of 40% of accounts might be reached prior to the system being formally mandated (during the legislative process) — that is, the industry could continue efforts to participate in CCR. Were this to happen, the Australian Government should 'suspend' the draft legislation (provided the level of participation remains above the 40% target)."

9.2 What are the additional benefits to consumers, small businesses and credit providers from mandatory credit reporting?

It is important to distinguish between the benefits from comprehensive credit reporting participation, and any additional benefits which flow from that participation being mandated.

As highlighted throughout the rest of our submission, there are significant benefits from CCR participation, including:

- **reduced information asymmetries for CPs** – meaning applications for credit can be simpler to make and process, placing downward pressure on the cost of credit and empowering CPs to make better lending and credit management decisions
- **improving competition amongst CPs** – especially by providing quick, reliable access to information from other participating CPs, and allowing for greater risk-based pricing and new CP products and business models based on data
- **benefits for those who hold credit products** – including simpler application processes, potential rewards for positive repayment history (e.g. ability to access credit on more favourable terms), increased financial inclusion and lower cost credit than would otherwise be possible.

We consider that there is very little additional benefit from mandatory participation over and above the benefit obtained from participation generally. In some cases, there *could* be some benefits that flow from requiring participation of CPs who would otherwise not choose to participate. If that were to occur, then increased data in the system would benefit those CPs' customers (who would have more CCLI, RHI and FHI about them within the credit reporting system) and competitors (who could then receive and use that additional data). The actual scale of these benefits depends on many factors, including the degree of burden associated with the mandatory regime in question, the nature of the CPs who would not have participated but for a mandatory requirement, and the costs of compliance. Our experience with the mandatory regime in Part 3-2CA of the National Credit Act is that it has proven extremely inflexible, which has negated any potential additional benefit (and would continue to do so if more CPs were subject to the regime, unless the undue inflexibility of the regime is rectified). See our answer to the question about unintended consequences for more information about the effect of this inflexibility.

9.3 What have been the costs to implement mandatory credit reporting?

Feedback from the relevant Arca Members about the costs of implementing the mandatory regime has been varied. A general comment has been that costs associated with the mandatory regime are hard to quantify - particularly as they occurred at the same time as changes associated with the financial hardship reporting reforms. Two CPs identified significant costs distinct from the costs associated with voluntary participation (i.e. the costs of compliance with Part IIIA of the Privacy Act, the CR Code, the PRDE and the ACRDS). In the case of one of those CPs, the costs were multiple millions of dollars, but lower than the initial upfront costs of voluntarily participating in comprehensive credit reporting and then consuming credit reporting information.

Another CP advised us that costs arose from:

- **The need to test systems:** Large CPs such as those subject to the mandatory regime have numerous credit products (often in excess of 20-30 products, many of which were offered by other entities before e.g. mergers occurred), each with their own systems containing customer and product information. Each system must be tested to ensure that data can be supplied under the mandatory regime.
- **Implications of flow-on changes**: For instance, in order to comply with the timeframes built into s133CU of the National Credit Act, one large CP changes its practices from providing information to CRBs once a month to twice a month. This change in turn required very significant amounts of testing across the totality of the CPs systems, to ensure that the CP's obligations under both the PRDE and the National Credit Act could be met. This occurred with the overlay of the requirement

to report breaches of the National Credit Act to ASIC (i.e. the degree of certainty CPs must reach about their ability to comply with the mandatory regime in all situations is high).

In this regard we note that the specific, inflexible nature of the mandatory regime in the National Credit may have exacerbated the costs of implementation, as well as the ongoing costs of compliance.

9.4 Have there been any unintended consequences of mandatory credit reporting?

Yes.

Although the Productivity Commission considered that complying with a mandatory regime would not be more burdensome than voluntary participation in credit reporting,[170] this has not been our experience with the regime in Part 3-2CA of the National Credit Act.

The regime in the National Credit Act is extremely inflexible. Part 3-2CA requires 100% supply of data even in circumstances where the marginal benefit of disclosing small amounts of information (e.g. reporting information about a handful of accounts) is greatly outweighed by the cost and burden to the CP of doing so. Additionally, the PRDE contains various exemptions intended to balance the benefits from complete information with the practical challenges, costs, and potential confusion associated with reporting certain items – not all of these exemptions are repeated under the mandatory regime, making the participation in the mandatory more burdensome and costly than it needs to be. It is also more difficult to update the mandatory regime in the National Credit Act to respond to new situations than it is to update the PRDE, adding further inflexibility.

Our experience with the inflexibility and burden of mandatory regime is evidenced by the need for ASIC no-action letters about technical non-compliance in the context of CRB data rejections, domestic abuse situations and unregulated credit contracts, as well as the need for formal ASIC exemptions.[171] Although it may be possible for the regulator to give a degree of comfort about technical non-compliance, the need for this process causes cost, burden and uncertainty for both industry and the regulator.[172]

We have also observed that the presence of ASIC-administered obligations to supply 100% has altered the focus of some CPs. Understandably, those CPs are focused on ensuring they comply with their supply obligations; however, our experience has been that this focus makes it more difficult to progress industry-led measures to ensure that data is accurate, consistent and meaningful (especially where doing so involves systems changes that creates even minor uncertainty about CPs' ability to supply data in order to comply with the mandatory regime). As such, there appears to be an unintended consequence that a mandatory regime prioritises supply over meaningfulness, utility and quality of data – over the long term this could degrade the effectiveness of the credit reporting system.

We consider that it would be possible – and indeed preferable – for any mandatory regime to be less focused on complete supply of information and more targeted at meaningful participation in credit reporting. We strongly encourage the Review to consider how the mandatory provisions can be amended in this way. For instance, the obligations could be about 'substantially complete supply', or even supply in situations required by the PRDE or some other instrument.

Recommendation 30

Amend the provisions in the mandatory credit regime in Part 3-2CA of the National Credit Act to remove the focus on the need to supply 100% of credit information about eligible credit accounts.

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[170] Productivity Commission, *Data Availability and Use*, Report No 82 (2017), pages 230-231.
[171] See the ASIC Credit (Mandatory Credit Reporting) Instrument 2021/541.
[172] We note that fees for requesting ASIC use its modification and exemption powers can be significant.

9.5 Should the scope of mandatory credit reporting be expanded to include other credit providers or other types of information, and if so, how should this be done?

Arca considers that this question is linked to the earlier question about data sharing between CRBs, in that both of these potential solutions appear to be intended to increase the amount, and potentially the consistency, of information held by CRBs and visible/useable by participating CPs. Our answers to these questions should be read together.

Requiring CPs who are already participating in comprehensive credit reporting to comply with Part 3-2CA would serve no additional public policy benefit. However, imposing the current mandatory regime on these entities would increase costs, as well as exacerbate the existing issues and unintended consequences we have identified (i.e. reduced flexibility, greater focus on supply reducing incentives to consider measures that would improve data quality and useability). The entities and the regulator would also need to incur costs to ensure compliance with the mandatory provisions – as noted above, for negligible to nil benefit. As such, expanding the scope of the current mandatory regime to include CPs who are already participating should be avoided.

Other methods of increasing participation

However, Arca does support increasing participation in the credit reporting system, and increasing the amount and consistency of data held by CRBs. We consider that the enhancements we have identified to the system in our submission would incentivise further participation by CPs – external reviews have acknowledged that the relative benefits to participate grow as the information within the system increases.[173] A key enhancement that would incentivise participation is the inclusion of current balance in the credit reporting system as a type of positive credit information: see **Recommendation 6**. Greater availability of RHI and FHI would also be likely to incentivise further participation, including from CPs who provide products not regulated under the National Credit Act.

Other measures could also meaningfully influence participation without attracting the additional burden of Part 3-2CA of the National Credit Act. ASIC's **Regulatory Guide 209** *Credit licensing: Responsible lending conduct* (RG 209) says that what is 'reasonable' in the context of complying with responsible lending obligations is not static, but varies based on development and innovations adopted, such as comprehensive credit reporting: see RG 209 at RG209.23(d).

Now that there has been significant uptake of comprehensive credit reporting, we consider that ASIC should take a stronger stance that participation is an important aspect of compliance with the responsible lending obligations. This would be consistent to the feedback that ASIC gave to the ACCC as part of the authorisation process for the PRDE in 2016, in which it stated:

> If a credit provider chooses not to use such a tool [i.e. comprehensive credit reporting], ASIC would expect the credit provider to be able to explain why the use of the tool was not appropriate or what other steps the credit provider has taken to verify the consumer's financial situation.[174]

A stronger stance (by the regulator, and/or in delegated legislation) in respect of the responsible lending obligations could increase participation amongst CPs regulated under the National Credit Act without the need to apply the inflexible obligations in Part 3-2CA. In this regard we note the proposed regulation of BNPL credit providers, which will require many CPs to participate at the partial level without imposing the obligations in Part 3-2CA.

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[173] For example, see Financial System Inquiry: Final Report (2014) page 192. This principle also underpins the Productivity Commission's work in its Inquiry into Data Availability and Use – including through the proposal for a target for voluntary participation in comprehensive credit reporting by 2017 (see pages 168-170 of the Draft report).

[174] ASIC's submission to that process is available here.

More generally, the potential for future mandatory measures (more light-touch than Part 3-2CA) could be a useful further factor convincing CPs who are yet to participate in comprehensive reporting to assess their plans and place sufficient priority on credit reporting. Any such prospect of future requirements is likely best considered on a sector-by-sector basis, while being fully cognisant of both the effort and time needed to participate comprehensively, and the other regulatory and compliance priorities of the businesses involved. One potential sector where consideration should be given to future mandation is BNPL credit providers, given the significance and reach of those products and the potential benefit to the entire market (and the customers of those providers) from their comprehensive participation in credit reporting.

As such, we consider that any measures to mandate participation should be:

- As light-touch as possible – only relying on direct obligations to supply information where absolutely necessary;
- Only apply to CPs who are not already participating in comprehensive credit reporting; and
- Consistent with the Productivity Commission's proposed approach to mandatory comprehensive credit reporting, only implemented where voluntary compliance does not occur or is not sustained.

Recommendation 31

The Review should avoid applying the obligations in Part 3-2CA more broadly without significant changes to that regime to reduce the inflexibility of those obligations and the unintended effect on participant incentives. Rather, any measures to mandate participation in comprehensive credit reporting should:

- **be as light-touch as possible – only relying on direct obligations to supply information where absolutely necessary;**
- **only apply to CPs who are not already participating in comprehensive credit reporting; and**
- **only be implemented where voluntary compliance does not occur or is not sustained.**

Recommendation 32

Consistent with Recommendation 31, consideration should be given to future mandating of participation by BNPL credit providers if meaningful participation at the comprehensive level does not eventuate.

Supplying data to multiple CRBs

As noted above, Arca supports greater consistency in the datasets held by CRBs. In general terms, measures to increase the consistency greater consistency in the data held by CRBs would lead to reduced information asymmetry, giving CPs and individuals confidence that they are receiving a complete picture from whichever CRB they choose to request information from. Further work is needed to identify the best method for achieving this outcome – we believe this should be a high-priority piece of work after the completion of the Review (see **Recommendation 2**).

For completeness we note that obligations which have the effect of requiring participating CPs to supply information to more than one CRB could be considered under the PRDE framework (i.e. it may be that a legislative option is not necessary). We expect that this issue will be considered in the upcoming Review of the PRDE; the Review is due to be completed in sufficient time to allow the recommendations of the Review to be considered before the ACCC's authorisation of some aspects of the PRDE expires in December 2026.

New arrangement information

For completeness, we note that Arca has recommended that the review consider whether new arrangement information should still be retained as information within the credit reporting system (see

Recommendation 9). New arrangement information is a type of mandatory credit information under s133CP(1), so amendments to the Part 3-2CA regime could also be required.

9.6 Are the Part 3-2CA legislative provisions fit for purpose, and if not, what improvements should be made to ensure the legislation is working effectively?

As indicated by our answers to the previous questions in this Part, we have significant concerns about the extent to which the Part 3-2CA legislative provisions are fit for purpose. Our suggestions for amending the regime to ensure it works effectively are set out above – and should be taken as the key component of our response to this question. We also note there could be a good case for repealing or 'switching off' the regime, on the basis that very significant levels of participation have occurred. Additionally, as noted above, there are other superior options which can be pursued to further increase participation in comprehensive credit reporting.

In addition to those general comments, we have a range of specific suggestions. The extent to which these are relevant will depend on other, more general decisions about the mandatory credit reporting provisions in Part 3-2CA. For instance, broader changes could make some of these issues and recommendations redundant.

Statements to the Treasurer

Division 4 of Part 3-2CA requires CPs subject to the mandatory regime – and the CRBs they must supply to – to provide audited statements to the Treasurer about the bulk supplies of information required under section 133CR of the National Credit Act.[175]

The rationale for these obligations is unclear, but the explanatory materials suggest the purpose could be for the Treasurer to determine that the mandatory supply obligations have been met.[176] We note that this is very unusual – it is unclear why ASIC is/was unable to itself determine whether the obligations have been met, and to take steps to address non-compliance. To the extent that there may have been some benefit from ensuring sufficient confidence in the market that the largest CPs were participating (i.e. to incentivise other smaller CPs to also participate), that benefit has now elapsed, and is unlikely to be repeated for any subsequent expansion of the regime. As such we consider that these obligations are redundant and impose additional costs on any new CPs subject to the regime.

Recommendation 33

Division 4 of Part 3-2CA of the National Credit Act, and the associated regulations, should be repealed.

ASIC instruments and no-action letters

ASIC has made an instrument which excludes certain kinds of accounts from the definition of 'eligible credit account' – the effect of this instrument is that the mandatory supply obligations do not require the relevant CPs to supply information about those accounts.

If the regime is retained in the current form, it would be preferable for any exclusions from the definition of 'eligible credit account' to *also* be capable of being made through regulation. We note the relevant ASIC instrument is due to sunset in 5 years – placing exclusions (which are likely to be settled from a policy perspective) in an instrument with a longer sunsetting period like the National Credit Regulations will promote certainty and reduce the effort needed to maintain the regime. More generally we note it

[175] Details about the information that needs to be included is set out in Regulations 28TC and 28TD of the National Credit Regulations.

[176] Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019 at paragraphs 1.22 and 1.176.

would be preferable if any mandatory supply regime had exemptions fully consistent with those in the PRDE (as updated from time to time).

Recommendation 34

If the mandatory credit reporting regime is retained, then the mandatory supply obligations should align with the exemptions in the PRDE as updated from time to time. If this is not possible, then:

- **section 133CO should also allow for regulations to be made to determine accounts which are not eligible credit accounts; and**
- **the accounts excluded by the *ASIC Credit (Mandatory Credit Reporting) Instrument 2021/541* should be excluded by regulation instead – in order to promote simplicity and reduce the burden of maintaining the regime.**

As the Review is aware, ASIC has previously granted several no-action positions in respect of non-compliance with the mandatory credit regime. One such no-action position related to family violence[177] and RHI for unregulated credit contracts where there is an FHA.[178] We understand there has been consideration given to making those positions a permanent part of the legal framework, but that changes may have been delayed due to this Review. These requests follows applications for relief by industry in order to protect consumers, simplify the operation of the mandatory regime and avoid poor outcomes. We consider that the relief given through ASIC no-action positions should be formalised as part of the mandatory regime wherever necessary – more formal arrangements are simpler for participants to locate and comply with, and promote certainty about legal obligations.[179]

Recommendation 35

If the mandatory credit reporting regime is retained such that the previously-granted ASIC no-action positions remain necessary, then those positions should be given effect to via amendments to the National Credit Act or National Credit Regulations.

Eligible CRBs for mandatory CPs

The mandatory credit reporting regime in the National Credit Act applies to 'eligible licensees', as defined in section 133CN of that Act. That definition includes 'large ADIs'.[180] At the time the mandatory CCR Regime commenced, there were four large ADIs: Commonwealth Bank of Australia, Westpac Banking Corporation, Australia and New Zealand Banking Group and National Australia Bank. Since that time, Macquarie Bank has grown in size such that it is now a large ADI.

The mandatory credit reporting regime requires eligible licensees to supply to all CRBs which are 'eligible CRBs' for that licensee. A CRB is an eligible CRB if it satisfies conditions set out in regulations, or, for the initial four large ADIs, there was an agreement between the eligible licensee and the CRB in force on 2 November 2017. At the commencement of the regime, all four large ADIs had agreements with all three CRBs, so the regime requires them to supply to the whole CRB sector. No regulations have been made

[177] This aspect of the no-action position is referred to in this media release, although we note ASIC also gave a separate no-action position for various other provisions of the National Credit Code on the issue of family violence – it is that other no-action letter linked to in the media release.

[178] The restrictions on FHI mean that otherwise that RHI could have been misinterpreted; Arca considers that the restrictions on FHI and RHI should be amended: see Recommendation 29.

[179] ASIC no-action positions are subject to a range of conditions and qualifications (see ASIC Regulatory Guide 108 *No-action letters*) and do not affect third party rights.

[180] The definition of large ADI is set out in the National Consumer Credit Protection (Large ADI) Determination 2023.

for the purposes of the eligible CRB definition, so for Macquarie (and any subsequent eligible licensees), the regime is ineffective and imposes no requirements as there are no eligible CRBs.[181]

Recommendation 36

If the mandatory regime is retained in the current form, regulations should be made under s133CN(2)(b) of the National Credit Act to specify when CRBs are eligible CRBs that need to be supplied with information under the mandatory credit reporting regime. In doing so it may be desirable to ensure that eligible licensees are subject to similar obligations.

9.7 Are any of the Part 3-2CA provisions obsolete and can be removed?

Please see our response to question 9.6 above for suggestions about obsolete provisions. In particular we consider that Division 4 and the associated regulations are obsolete and should be repealed: see **Recommendation 33**. Additionally, provisions referring to FHI that reference the date of 1 July 2022 could be simplified to remove that reference as FHI has a twelve-month retention period so any such FHI has since been deleted.[182]

[181] The explanatory materials support the conclusion that regulations would need to be made for the regime to have effect on subsequent eligible licensees. See paragraph 1.150 of the Explanatory Memorandum to the National Consumer Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Bill 2019.

[182] See, for example, s133CP(3) and Item 4 of the table under s133CU(1). The retention period for FHI is set in Item 2A in the table in s20W of the Privacy Act.