Australian
Privacy
Foundation

CHOICE

Submission by the
Australian Privacy Foundation;
CHOICE;
Consumer Action Law Centre;
Financial Counselling Australia (FCA); and
Financial Rights Legal Centre

Treasury

National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2019

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Introduction

Thank you for the opportunity to comment on the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2019* (**the Bill**). This joint consumer submission has been prepared by the Financial Rights Legal Centre in consultation with the Australian Privacy Foundation (**APF**), CHOICE, the Consumer Action Law Centre (**CALC**), and Financial Counselling Australia (**FCA**).

We have expressed our broad concerns about Comprehensive Credit Reporting (**CCR**) in several previous consultations so they are not re-stated here. Nevertheless, we want to emphasise two main points. First, the consumer credit liability information that will appear on credit reports will now display previously undisclosed liabilities. This means that repayment history information (RHI) will provide very little additional value for responsible lending purposes. Second, including financial hardship information in credit reports will lead to fewer consumers proactively talking to credit providers to obtain hardship assistance. This will undermine a decade of hard work and success in cementing good hardship practices.

The remainder of this submission will address the following:

- Policy concerns:
    - Reducing retention time for financial hardship information;
    - Reducing accessibility of financial hardship information; and
    - The need for public disclosure of information security risks.
- Drafting concerns
    - Problems with the definition of "financial hardship indicator"; and
    - The need for a robust independent statutory review.
    - Amendments to external dispute resolution requirements.

Policy Concerns

Retention of financial hardship information

The proposed 12-month retention period for financial hardship information is unfair because of how it will affect consumers. It is also unnecessary in assisting lenders to make responsible lending decisions.

Financial hardship information should instead be removed from credit reports directly after a hardship arrangement is completed, or after six months for permanent contract variations. For

ease of CRB automation, all hardship information could be removed one month after CPs stop providing the *hardship arrangement indicator* along with a consumer's corresponding RHI.

The current proposed retention period of 12 months is too long for temporary arrangements and it will produce inequitable results. For example, if a consumer's contract is varied permanently (which may include never paying back the full amount of the loan), the *contract variation indicator* disappears 12 months from the date of variation. However, if a consumer has a period of six months of reduced payments followed by six months of extra payments and is then completely up to date, the financial hardship information will remain on the person's credit file for 18 months. There should be a clear advantage for people who make arrangements and stick to them, compared to people with a rough patch of RHI or a drastically reduced permanent variation. This legislative framework will not achieve better and proactive communication between consumers and their lenders. See Appendix A for additional explanatory scenarios.

Financial hardship information will not foster responsible lending because if a person is back on track at the time of a new credit application, the financial hardship information is no longer relevant to the prospective lender. Additionally, the summary of the law released by the Attorney-General's Department says the Government wanted to *ensure consumers are not subsequently disadvantaged once they are no longer experiencing hardship*"[1]. Removing all hardship arrangement indicators one month after the arrangement has been concluded would ensure that consumers who are back on track and paying their liabilities are not disadvantaged by the continuation of reporting of financial hardship information. Any additional retention after a consumer is no longer in hardship is unfair and bad practice.

As to the *contract variation indicator*, we also have concerns about the 12-month retention timeframe. In some cases a permanent variation could be quite drastic, such as a permanent and significant reduction in the repayments and no interest, fee or charges for the duration of the loan, whereas in other it could simply involve a relatively small reduction in repayments with an increased loan term and the same interest, fees and charges as applied to the original contract. We submit that the 12 month retention period could still have harsh and inequitable results and will act as a disincentive for borrowers to be frank with their lenders when they are in hardship.

The longer the hardship information remains on the credit report, the less relevance it has. Where someone has recently applied for hardship, it is possible they could have recent payslips etc. with which to apply for additional credit. However, as time goes on this is not likely unless their position has improved. In the case of David in the attached scenarios, for example, within a few months of the variation only proof of Centrelink income would be available if he were to apply for additional credit. We therefore submit that contract variation indicators should only be retained for 6 months from the date of the variation.

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[1] *Web Guidance - New framework for representing hardship arrangements in consumer credit reporting, available at: https://www.ag.gov.au/Consultations/Pages/Review-of-financial-hardship-arrangements.aspx*

It is important that consumers can expect a consistent and predictable approach from CPs with regard to hardship information. Consumers need to know exactly when financial hardship information is going to be cleared from their credit reports so they can plan when they will be able to apply for new credit or to refinance existing liabilities. For this reason, we believe the meaning of the term *hardship arrangement indicator* needs to be redrafted to make it clear that a consumer is no longer in hardship after they are paying at least the original contractual payments. Once a consumer is back to paying at least the contractual payments (even if the are paying extra as part of the hardship agreement), then the *hardship arrangement indicator* should be removed from the credit report. This will also provide an appropriate incentive for consumers to complete their arrangements where possible. This redrafting is discussed in more detail below.

Alternatively, if this retention method is too difficult to put into practice, *hardship arrangement indicators* could be removed automatically two months after being added to the credit report. This is more in line with the current retention framework and would result in the final hardship arrangement indicator dropping off when the person met their second full repayment following the conclusion of a hardship arrangement. While this method would only ever show up to 2 months of hardship arrangement indicators, it would be equally effective at putting a prospective credit provider on notice that an arrangement was in effect for the purpose of prompting additional enquiries.

Our understanding is that the situation in New Zealand is changing to more closely reflect the position we advocate above. The amended arrangements mean that consumers who are no longer in a hardship arrangement are not disadvantaged by lingering indicators on their credit reports.

> *"Also in NZ there are options on how banks can report hardship – either it's reported as an 'account status' each month; or it can be reported as a 'payment status' of 'H' each month; or combination of both.*
>
> - *We've decided to report hardship as an account status only. This is because it only affects the customer record during the hardship period (and is removed once they are no longer in hardship). The payments history will still show payments as being met each month – rather than arrears.*
> - *The reason for this approach is that while the customer is in hardship, the account flag will advise other lenders only during the hardship period. Once the customer has successfully completed the hardship programme conditions, their credit record will return to normal and the hardship arrangement/adherence will have no impact on their record or score.*
> - *The alternative, hardship reporting in the payments status, means the individual payment flag will stay on a customer's record for 24 months and affect their bureau credit score, even though the customer may have successfully completed the programme.*

We believe this approach should stop customers in hardship obtaining more credit, while not affecting their future credit prospects once they are rehabilitated."[2]

Recommendations

1. **Schedule 2, item 8 of the Bill (Section 20W of the Privacy Act 1988) should be redrafted to ensure that *hardship arrangement indicators* are removed one month after the CP stops supplying financial hardship information along with the corresponding RHI.**
   a) **Alternatively, Schedule 2, item 8 (Section 20W of the Privacy Act 1988) could be redrafted to say *"financial hardship information which is hardship arrangement indicators: the period of 2months that starts on the day on which the monthly payment to which the information relates is due and payable"***

Visibility of financial hardship information

Financial hardship information should only be visible to CPs that are making a responsible lending assessment on applications for new or extended credit. Financial hardship information should not be visible in the same way as RHI, which is to say to all CPs that are participating in CCR at any time.

By limiting visibility of financial hardship information to lenders conducting a responsible lending assessment on a new credit application, the framework will still ensure that the CRBs and CPs relying on the RHI will have a more accurate picture of a consumer's repayment obligations and whether they are meeting those obligations, but only in the context of assessing whether additional credit is not unsuitable. CRBs and CPs should not be able to view this new information for direct marketing, pre-screening or credit management purposes.

Limiting visibility will help protect farmers and small business

Consumer representatives know from experience that farmers, sole traders and small business owners often mix their personal credit facilities with business credit, especially when money is tight. It is common for farms or small businesses to be reliant on lines of credit to cover their cash flow troughs - to order stock and supplies, for example, to secure their ongoing revenue. The credit might be provided via an overdraft or other approved line of credit, or a personal credit card. Often these facilities are payable on demand and can be called in at the discretion of the credit provider.

If a farmer, small business owner or sole trader has a temporary hardship event such as an illness, their income may be affected and they may struggle to meet repayments on a personal

[2] Quoted text provided by Australian Banking Association

mortgage, car loan or personal credit cards. If that person then seeks a hardship arrangement on one or more of those accounts that information could be available to the other credit providers, including those that provide business-related credit. We worry that credit providers could call in on-demand business loans if they find out the sole trader is in hardship. A sole trader may have to shut down the business permanently if they can no longer source credit for supplies or other essential business expenses. This would convert a small temporary hardship event into a long-term serious problem, to the detriment of the individual, their credit providers, employees, and the local economy.

It is vital that access to financial hardship information be visible only to lenders assessing applications for new or extended credit, not lenders who are accessing credit reports for credit management purposes. This is consistent with the policy objective of this information being required for responsible lending purposes only, and would substantially reduce the risks of deterring consumers from enacting their legal right to seek a hardship variation, and of a small hardship event cascading into a more serious one.

Finally, ASIC must be tasked with conducting regular audits of CPs to ensure they are only gaining access to financial hardship information when they are accessing an application for new or extended credit. CPs must be required to keep records of their assessment, including the customer's credit application, in order to prove they were accessing financial hardship information appropriately.

Recommendations

2. **Schedule 2 of the Bill should be amended to ensure that only credit providers assessing new credit applications, including refinancing applications, are able to see access financial hardship information.**

   a) **Subsection 20E(4) of the Privacy Act should not be amended to add "financial hardship information" after "repayment history information"**

   b) **Instead, a new subsection should be added at the end of section 20E which states:**

      No disclosure of financial hardship information except for new credit assessments

      (8) Subsection (3) does not apply to the disclosure of financial hardship information unless the recipient of the information is:

      (a) a credit provider who is a licensee or is prescribed by the regulations; and

      (b) can demonstrate it is making a responsible lending assessment as part of an application for new or extended credit by the individual to whom the financial hardship information relates.

   c) **ASIC should be tasked with conducting regular audits on CPs to ensure they can show they were in fact assessing a new credit application when they accessed a consumer's financial hardship information.**

Use of financial hardship information

Financial hardship information should not be used to simply *reject* all credit applications. It should be used as an indication to CPs that further inquiries need to be made. In its final report AGD recommended that ASIC provide regulatory guidance as to what additional inquiries CPs should take when there is a hardship indicator in order to meet their responsible lending responsibilities. AGD reasoned that ASIC guidance could include recommending the credit provider make certain inquiries before a credit provider approves or denies credit to a consumer evidencing past or current hardship. This would be beneficial to consumers because it would:

> *…reduce a provider's ability to reduce hardship to a part of an automated process (such as being utilised as part of a credit score), as there would be a recommendation for the provider to seek further information before <u>either</u> rejecting or accepting a request for new or extended credit.* (Emphasis from original)

We are not trying to create a positive obligation on CPs to lend to consumers in financial hardship. We just want to ensure that all consumers are not rejected outright as part of an automated system once financial hardship information is on their credit reports. If consumers think a *hardship arrangement indicator* will close off all avenues for further borrowing it will absolutely discourage struggling consumers from talking to their banks about their financial hardship. Further, for some consumers refinancing may actually address their financial hardship by reducing their repayment burden.

It is important to note in this context that lenders have no obligation to lend to anyone. If a lender's credit assessment processes would result in the rejection of any application regardless of the existence or otherwise of hardship information (for example, because of their income level, or default or serious credit infringement information), then we do not support a process that requires a lender to ask particular questions about their hardship information, only to inevitably reject the application regardless of the answers.

While we are supportive of ASIC providing regulatory guidance to this effect, we think it will be very difficult to enforce, precisely because the ultimate decision to lend is at the discretion of the lender. Accordingly, the most effective protection against the potential misuse of hardship information is to keep the applicable retention periods as short as possible. We submit that our suggested retention periods above are sufficient to meet the policy objective of ensuring that prospective lenders are aware of any current hardship arrangement for responsible lending purposes, and there is no further benefit to be gained from retaining this information for longer, only potential detriment.

Credit Scores

We strongly support the Bill's prohibition on CRBs from incorporating financial hardship information into a consumer's credit score.

However, we note that all CPs have their own internal credit scoring mechanism which will of course incorporate financial hardship information. This is probably a good thing in the context

of responsible lending assessments while a consumer is in actual hardship, but there is nothing in the Bill to prevent CPs from continuing to incorporate financial hardship information into a consumer's CP-specific credit score long after the hardship indicators have disappeared from their credit reports.

We also support the Amendments to the *Mandatory Credit Reporting and Other Measures* 2018 Bill that were put forward in September 2018 by Senators Stirling Griff and Peter Whish-Wilson (Attached). These Amendments would require CRBs to have a policy about the use of credit reporting information to generate credit scores and to publish that policy on their websites. The Amendments would also prohibit CRBs from charging a consumer a fee for requesting a credit report (even if they have requested one within the last 12 months) and the CRB must include credit scores on free credit reports.

Recommendations

3. **ASIC Guidance should make it clear that for a CP to meet its responsible lending responsibilities it must make certain inquiries about financial hardship information before either rejecting or accepting a request for new or extended credit, unless the application would not meet the credit provider's lending criteria even in the absence of the hardship information.**
4. **We support Amendments to be moved by Senator Whish-Wilson, on behalf of the Australian Greens in September 2018 to the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018* (see attached)**

Public disclosure of information security risks

We support the inclusion of sections 133CS, 133CT, 133CV and 133CW which give credit providers (**CPs**) the ability to not supply data to a credit reporting body (**CRB**) that the CP does not reasonably believe is complying with the data security requirements in the *Privacy Act*. We believe this subsection will drive better security standards across the industry by forcing banks to take responsibility for the security compliance of CRBs when they hand over customer data. This subsection also empowers a CP to cease supplying customer data if it believes a CRB does not have appropriate security arrangements in place in order to comply with s. 20Q of the *Privacy Act.*

However, there is nothing in the Bill that requires any public disclosure or notification to customers when a CP stops supplying data to a CRB that it believes is not meeting its data security requirements. There is an obligation on the CPs to notify ASIC and the OAIC when they stop supplying data, but what about customers? They have a right to know if their credit reporting information is at risk because of inadequate security arrangements. They should also be notified if one of the major CRBs will have out of date or possibly incorrect information about them for the next 90 days or more. If the CCR regime is going to build a robust

environment of consistency of data between CPs and CRBs, then the public should be notified if one of the CPs is no longer supplying data to one of the CRBs.

Recommendations

5. **Licensees should be required to notify the public as well as ASIC and the OAIC if the licensee believes the credit reporting body is not meeting its obligations in section 20Q of the *Privacy Act 1988*.**

Drafting Concerns

The meaning of 'hardship arrangements' under 6QA

We have identified several critical errors in the drafting of Schedule 2, item 3. We do not believe it reflects hardship arrangements as they are currently used in practice and there is no clarity around when an arrangement is completed.

Capturing all informal arrangements

We are very concerned that the Bill as drafted fails to define the meaning of "*hardship arrangement indicator*" in such a way to successfully capture all the various formal and informal arrangements that take place between CPs and their customers with regards to financial hardship. We note that although the Explanatory Materials that accompany the Bill do not expand on the Bill's language, both the Attorney General's Department's (AGD) online guidance, and the final report from last year's review of financial hardship arrangements express the intent for a broader definition.

The AGD released information and guidance on the proposed hardship information changes[3] where it explains: "*A temporary hardship arrangement would be broadly defined and is intended to include informal forbearances, indulgences and simple arrangements.*"

Similarly, the proposed framework issued by AGD in September 2018[4], following its review of financial hardship arrangements, noted that the hardship arrangement indicator should be added to a consumer's credit report any time that consumer enters *"into **any sort of***

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[3] *Web Guidance - New framework for representing hardship arrangements in consumer credit reporting, available at:* https://www.ag.gov.au/Consultations/Pages/Review-of-financial-hardship-arrangements.aspx

[4] Attorney-General's Department, *Proposed framework for representing hardship arrangements in consumer credit reporting*, September 2018

arrangement *with their credit provider to alter/delay/suspend their obligations under the credit contract on the basis of financial hardship"* (emphasis added).

We do not believe that Schedule 2, item 3 (section 6QA of the Privacy Act) as currently drafted will catch all "forbearances, indulgences and simple arrangements" and it will not address potentially inconsistent industry reporting of repayment history information or ensure that consumers in similar financial situations will have correspondingly similar information in their credit reports.

The problem has always been that CPs do not consider (or record) every informal arrangement with consumers to be a "financial hardship arrangement" under the Credit Act. Under Schedule 2, item 3 of the Bill, a *hardship arrangement indicator* only gets applied if "*because of the individual's inability to meet [*his or her credit obligations], *the terms or conditions of the consumer credit are temporarily varied…"* (6QA(1)(c)). CPs have been very clear in their interactions with us that they do not consider informal indulgences to be a variation to the terms and conditions of the consumer credit contract, whether temporary or permanent.

We are very concerned that the Bill's current drafting will leave open a "loophole" where CPs can grant some consumers "indulgences" to pay a few payments late but specify that this is not a variation under the *Credit Act* and will not attract a *hardship arrangement indicator* for credit reporting purposes. Instead the consumer's RHI will be reported as late, despite the arrangement. For example, the CP tells the consumer:

"Yes, it is OK if you make a few payments late" and sends something in writing to the consumer confirming the details of the arrangement but goes on to state that it is not a variation of the contract.

Consumers who do not understand the implications (which will be most of them) will be very disappointed if they later discover their credit report has been adversely affected with negative RHI, leading to further distrust of the industry and increased complaints. On the other hand, if the credit provider explains to the customer that the arrangement is not a hardship variation under the law (that is, the customer's hardship notice has been refused) and that his or her credit report will show repayments as late despite the arrangement made, there will also be an increase in complaints to EDR as customers seek to enforce their hardship rights under the Credit Act.

The bill should be amended to ensure that any temporary change in repayment arrangements, however described, should be caught by the definition of hardship arrangement unless the arrangement involves all repayments being made within the grace period for reporting RHI. Requiring CPs to report hardship information in circumstances where the repayment will be made within the grace period would result in the perverse outcome that consumers would potentially have no negative RHI, but would have hardship information on their credit report if they had made an arrangement to pay late rather than simply doing so.

It is important that customers are treated fairly and consistently, and that accurate advice can be provided about the result of any particular course of behaviour, and that there is a clear advantage to maintaining contact with your credit provider, rather than simply falling behind. The regime should ensure that:

- Any payment made within the grace period for RHI does not result in hardship arrangement being recorded; and
- Any customer who calls (or responds to contact from) their credit provider to make an arrangement, receives a fair and predictable outcome that is better than if they simply pay late or not at all; and
- Where a CP rejects an application for a hardship arrangement, the customer is given appropriate information about their rights to dispute this decision in AFCA.

When does a hardship arrangement end?

Nothing in this new section indicates when a hardship arrangement has been completed. In practice hardship arrangements often include several months of reduced payments followed by several months of extra payments on top of the normal contractual payment to catch up with the loan. Would a *hardship arrangement indicator* accompany all those changed payments? Why should a consumer who is paying <u>more</u> than their normal contractual payments have an indicator on their credit report saying they are in financial hardship? If a consumer can pay more than their contractual payments, they are clearly no longer in hardship.

Schedule 2, item 3 (section 6QA of the Privacy Act) should be redrafted to clarify that a *hardship arrangement indicator* is no longer applicable once someone is paying the same or more than the originally scheduled payments even though this may be part of the agreed arrangement for the consumer to get back on track. This would have no effect on the enforceability of the arrangement, only whether hardship information is reported or not.

Arrangements which require no payments for a period of time

Subsection 6QA(1)(e) is currently drafted to say that a *hardship arrangement indicator* only applies when the "the individual meets the obligation to make the varied monthly payment" However, in practice many hardship arrangements require no payments at all for a period of time. The way this subsection is drafted, many common arrangements where a consumer is in such hardship they cannot pay anything may not attract a *hardship arrangement indicator*. While it could be argued that the individual has "met" the varied monthly payment of nil in these circumstances it would be better to make this intention clearer in the drafting.

Reporting RHI against an arrangement

We support the Bill's intention that repayment history information will reflect a consumer's ability to make repayments according to a hardship arrangement rather than their original contract.[5]

However, there is nothing in the draft legislation that ensures RHI will be recorded as a reflection of the temporary arrangement instead of the original contract. The explanatory materials should be amended to explain if this requirement is intended to be included in the

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[5] Exposure Draft Explanatory Materials para 2.12 and 2.21

Code or Regulations. If not, it must be incorporated into the legislation. In the absence of this clarification, the uncertainty in relation to these provisions that prompted the government's review of these issues will not be resolved.

Missing payments under an arrangement

Subsection 6QA(1)(e) is currently drafted to say that a *hardship arrangement indicator* only applies when "…the individual meets the obligation…". What happens if the consumer misses a payment under a hardship arrangement (something that often occurs with struggling consumers)? Is the consumer automatically thrown out of the arrangement? Does the consumer's RHI the next month immediately begin relating back to the original contract and there is no longer a *hardship arrangement indicator*?

We submit that consumers in a hardship arrangement should be given the full arrangement to try to keep on track. If a CP agrees to give a consumer six months of reduced payments then the consumer should continue to have RHI reported against the arrangement for the full six months, even if they don't always "meet the obligation to make the varied monthly payment" as this subsection currently requires. The nature of hardship is that consumers are usually juggling a number of competing obligations with insufficient income to go around. A consumer may meet the first two repayments under an arrangement, and then make the third payment a few weeks late (because their fridge broke down or their car registration was due), or a double payment in the fourth month. The point of reporting against the arrangement is that this would be reflected by a 1 or 2 against the arrangement, rather than a sudden death scenario where all bets are off. The legislation should make this clear.

This entire subsection should be deleted. Consumers should be given a *hardship arrangement indicator* as long as the first four subsections (once amended as recommended) apply.

The final clause of 6QA(1) should also be amended to remove the requirement that the payment <u>met</u> an obligation. It can just say that the payment was made (or not required) under an obligation.

Amendments to external dispute resolution requirements

The Bill makes some additional amendments relating to external dispute resolution; however, we are concerned by the description of these amendments in the draft explanatory memorandum. As described by the explanatory memorandum, the amendments are to allow credit providers to continue to access the credit reporting system even though they are not members of an external dispute resolution scheme. Instead, they may 'be subject to the jurisdiction of a tribunal'.

The existing requirement is for credit providers to be members of an external dispute resolution scheme approved by the Privacy Commissioner in accordance with section 35A of the Act. There is no reference to a tribunal in these provisions, nor in the amendments in the bill. Our concern is that state and territory civil tribunals do not comply with the requirements of section 35A and if it is intended that such tribunals are to be approved then this will have significant consequences. These include a significant broadening of the scope and type of

credit providers that are able to use the credit reporting system, including any business that offers payment terms on credit.

The explanatory memorandum should be clear that the intent with the change is to limit the credit reporting system to credit providers that are members of or subject to an external dispute resolution scheme approved by the Privacy Commissioner, and that the bill is not allowing credit providers that are subject to the jurisdiction of a state or territory civil tribunal to use the system and evade the existing requirement.

Recommendations

6. Schedule 2, item 3 of the Bill should be amended in the following ways:

   a) 6QA(1)(c) should be amended to say "*because of the individual's inability to meet those obligations, the terms or conditions of the consumer credit are temporarily varied, which includes all informal forbearances, indulgences and simple arrangements unless the varied repayment would be made within the grace period for reporting RHI*"; and

   b) 6QA(1)(d) should be amended to say *the variation affects an obligation the individual has to make a monthly payment in relation to the consumer credit which is less than the originally scheduled contractual payment, including an obligation that no payment at all is required under the arrangement*".

   c) 6QA(1)(e) should be deleted.

   d) The final clause of 6QA(1) should be amended to say "*then the fact that the payment was made (or not required) under an obligation that arose under the temporarily varied terms or conditions is* financial hardship information *about the individual*".

7. The requirement for RHI to reflect payments made under a temporary arrangement instead of the original contract should either be incorporated into the language of the legislation or it should be pointed out in the explanatory materials that this change needs to take place in the Code or Regulations.

8. That the explanatory memorandum commentary relating to external dispute resolution be clear that the intent of the change is to limit the credit reporting system to credit providers that are members of or subject to an external dispute resolution scheme approved by the Privacy Commissioner,

Need for a robust independent statutory review

We support the inclusion at s. 133CZL of an independent review to be conducted in 2023. However, we strongly encourage the Government to ensure that this review covers the broader objectives of comprehensive credit reporting, and not only the operation of the supply requirements detailed in this Bill.

Government has repeatedly ensured the Australian public that the new mandatory CCR regime will "ensure good customers are rewarded with better deals" as well as "improve the capacity of lenders to meet their responsible lending obligations."[6] We want to ensure that these expected achievements of a mandatory CCR regime are being met and that the benefits outweigh any negative consequences.

Although the current Explanatory Materials do not expand on the legislation's review clause, the Explanatory Materials that accompanied the last iteration of this bill did include more detail about the objectives of an independent review[7]:

> *The Bill is not specific on the scope of the review so as not to limit the review when it is established. However, the Government expects that the review could consider:*
>
> - *how the specific objectives of the mandatory regime have been met, including whether sufficient participation by credit providers in the voluntary regime has been achieved;*
> - *the benefits for consumers and small businesses from the mandatory regime;*
> - *options for broadening the scope of the mandatory regime (including access by non-Australian credit license holders to information supplied under the regime); and*
> - *whether further measures are required to maintain the security of comprehensive credit information (including to facilitate new technological solutions for data exchange).*

We would strongly encourage the Government to amend the current 2019 Bill to reflect these critical objectives to ensure they are included in the independent review. We would also encourage the Government to look at some of the additional review questions that were used by the New Zealand Privacy Commissioner when it reviewed CCR in NZ in 2018.[8] For example, has CCR opened mainstream credit to parts of the community who may otherwise be excluded due to a lack of information about them? In other words, has CCR improved financial inclusion in Australia?

Recommendation

9. **The Mandatory CCR Bill 2019 should be amended at s. 133CZL to ensure that the broad objectives of CCR are covered in the independent review.**

[6] Media Release from Office of the Treasurer, The hon Scott Morrison MP "Mandating comprehensive credit reporting" 2 November 2017. Available at: http://sjm.ministers.treasury.gov.au/media-release/110-2017/

[7] *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting) Bill 2018*, Explanatory Memorandum, para 1.36

[8] New Zealand Privacy Commissioner, *Comprehensive Credit Reporting Six Years On Review of the operation of Amendments No 4 and No 5 to the Credit Reporting Privacy Code*, 10 April 2018. Available at: https://www.privacy.org.nz/assets/Uploads/Report-on-Review-of-CRPC-Amendments-No-4-and-No-5-PDF.pdf

Concluding Remarks

Thank you again for the opportunity to comment. If you have any questions or concerns regarding this submission please do not hesitate to contact Financial Rights on (02) 9212 4216.

Kind Regards,

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Appendix A

Consider the following scenarios and the result for debtor's credit report under the current retention periods in the *National Consumer Credit Protection Amendment (Mandatory Comprehensive Credit Reporting and Other Measures) Bill 2019*:

Scenario 1: Mary gets back on track

Mary needs to have an operation involving one week in hospital and 3 months of rest and rehabilitation. She does not have enough sick leave to cover this period and will be on leave without pay for nearly 3 months. She has a personal loan and a credit card. She applies for a hardship variation to the effect that she will make no payments at all for 3 months and then she will pay 50% extra when she returns to work for 6 months to catch up on her payments – an arrangement lasting 9 months in total.

Under the current draft this would result with a hardship arrangement indicator being reported from either the first day no payment is due (depending on the interpretation of an obligation being "met") or from the first day she is back at work and paying 50% extra, and then every month until the last month in which she has to meet the 50% extra requirement, which will be six months after the operation. This would result in the last hardship indicator disappearing from her credit report 12 months after that date, being 21 months after the contract was originally varied. This is despite the fact that she will have been paying at least her contractual payments for 18 months at that stage and has no permanent impairment to her capacity to pay.

Scenario 2: David permanently loses his income

David loses his job in his late 50s due the impact of a chronic health condition. He is highly unlikely to be employed again due to his age and ill health. He is depending on Centrelink for the foreseeable future. He has no assets except a car and his superannuation. He has had a credit card debt for many years and has only managed to make the minimum repayments most months even when he was working. His credit provider agrees to allow him to reduce his repayments permanently to $50 per month, no interest and no fees.

Under the current draft David's permanent contract variation indicator will disappear 12 months from the time his contract is varied (and 9 months before Mary's hardship arrangement will disappear).

Scenario 3: Yousef and Agnes need to new long-term plan

Yousef and Agnes have a mortgage. They are married with 4 children. Their youngest child is born with a disability and Agnes is no longer able to work even part-time because of her caring duties. Yousef and Agnes have already been paying their mortgage for 10 years. They have a good repayment record and they are only in their thirties. The credit provider agrees to permanently reduce their mortgage repayments and extend the term of their mortgage.

Under the current draft Yousef and Agnes' permanent contract variation indicator will disappear 12 months after their repayments are reduced (9 months before Mary's and at the same time as David's). This is despite the fact that they will ultimately pay back the entire amount borrowed including all interest and charges.

There is no logic to these differing results, and the result is completely inequitable.